Exhibit 23

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 21-30589(MBK)
LTL MANAGEMENT LLC,	.	
Debtor.	.	
LTL MANAGEMENT, LLC,	.	Adversary No. 21-3032(MBK)
Plaintiff,	.	
v.	.	Clarkson S. Fisher U.S. Courthouse 402 East State Street Trenton, NJ 08608
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1 TO 1000,	.	
Defendants.	.	Tuesday, July 26, 2022 10:04 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commenced at 10:02 a.m.)

THE COURT: All right. Good morning, everyone. This is Judge Kaplan. We will start today's LTL Management, LLC calendar.

We've had an off-record -- whoops. We've had an off-record --

(Echo)

THE COURT: Oh, is my -- that's not good. Unmute me.

(Echo continues)

THE COURT: Do you want me muted or not?

THE CLERK: (Indiscernible).

THE COURT: You want me muted. I am muted. I take that personally, you know.

(Laughter)

THE COURT: All right. And there's no echo. Good.

Well, I won't push buttons.

We had an off-record discussion on the order, and we're going to start with the discussion relative to estimation and the competing positions with respect to whether and how we should move forward with estimation.

I've had, let's see, from the briefing, I think the last submission was Mr. -- was the TCC's submission. So why don't we start from there and start with the debtor and have them respond or make your presentation and then go forward. Unless you wanted a different order.

MR. GORDON: No, Your Honor. We're fine with that.

THE COURT: Okay.

MR. GORDON: Thank you.

And we do have a PowerPoint presentation.

THE COURT: Of course you do.

(Laughter)

MR. GORDON: And hopefully, we've got someone behind the scenes here that's going to make that happen.

Greg Gordon again on behalf of the debtor, Your Honor.

THE COURT: Thank you. Good morning.

MR. GORDON: Good morning.

So we in advance of the June hearing had submitted a statement indicating what we thought the appropriate next steps would be for this case. And I think by the time we got to the June hearing, Your Honor had had an opportunity to read that and we tried to be very thoughtful about a way to move forward with an estimation process that would both be shorter than what we've seen in other cases and also be done in a way that would complement the mediation process and hopefully provide energy to the mediation process.

And at the June hearing, Your Honor indicated that you were very seriously thinking about the retention of a Rule 706 expert. And I think I indicated at that hearing that we would go back and think about that. That was something that

had not -- we had not considered before. And we thought about that, and we thought that that actually would be helpful in a couple of ways.

And so when we filed our next pleading with respect to these issues, we did build in the idea of an expert, actually two experts in our view, which I'll go through in more detail. But again, fundamentally, we're just trying to come up with an approach that we thought would complement the mediation process and at the earliest time promote settlement in this case, put the parties in a position to know a lot more about where they are and hopefully get to a settlement in the near term.

So if we go to the next slide, please.

So, Your Honor, as I was thinking about this and preparing for today, what we're proposing in my mind is a kind of a hybrid approach or maybe it's some sort of concurrent path approach. But there are three pieces to it the way I think about it. One is the estimation piece. And we do think that that's very important. Obviously, we'd like to see an early settlement. We've said that from day one. I think the parties have seen how we've been acting in mediation. I think everyone's aware that there's a strong desire to settle as soon as we can.

But we think we need -- at the same time we're trying to mediate, we're trying to settle, that we need to have a

process, a litigation process in the background that will have a number of benefits to the case. One is it will maintain everyone's focus on what is the primary issue in the case, which is what is the extent of the company's liability for talc claims.

The other is it will require the parties as they are negotiating and discussing these issues to build support for their positions, to hopefully get past a circumstance where parties are just throwing numbers out with no real support, with no real analysis.

The fact that there will be litigation imposes a discipline and an orderliness to the process that we think will be benefit everyone. And it will avoid delay. If mediation is unsuccessful in the near term, we will have at least started down the process to estimation and won't have to do this in a sequential way where we've mediated for a while, then we have to hit a pause and then come back and talk about estimation. So we're advocating that this is a process that should start right away.

And then, of course, the second part of what we're proposing is we integrate mediation under the process itself. And what we've tried to do is come up with ideas in terms of where it would be appropriate to insert sort of fixed mediation sessions into the process at key stages of the estimation.

And then the last part of our proposal involves using

the expertise of court-appointed independent experts to do two things, really, to both facilitate settlement and then assist the Court with the estimation itself and to assist the parties with the estimation itself.

And, of course, as Your Honor probably knows from reading our pleading, what we have in mind are subject matter experts, experts who actually are going to bring to bear, you know, real knowledge about the issues that in our minds are key to coming up with an estimate of the company's aggregate liability for talc-related claims.

Next slide, please.

Now the TCC and others are obviously proposing a very different path. In our view, there's lots of drawbacks associated with the proposals that are being made. The one idea is that you allow the stay to be lifted to allow a group of cases to go back to the tort system. Initially, it was up to 90. Now it's 12.

But whether it's 90 or 12 or somewhere in between, I think as we've pointed out in our papers, they're all cherry-picked. I mean these are cases that are in our view not representative. They're not random. They're younger plaintiffs, as an example. And by their own admission, the TCC acknowledges they're not going to provide any meaningful information or any helpful information to the parties.

We already had I think close to 50 trials. Doing a

few more whether it's 12 or 50 or 90, that's not really going to help anything. It's going to be a big distraction. It's going to cause delay.

Their other path that they're proposing is a plan process which we believe is premature, and it's premature in our view because there is no agreement at this point on the liability and there's been no estimation of the aggregate liability.

And it seems to us based on what we've seen that this is a process that's designed basically to short-circuit the debtor's rights to limit its ability to seek discovery that's been granted in other cases, limit its ability to make its case at confirmation, to make its estimation case. And we don't think that's the way to go.

In addition, it's going to layer on lots of other issues and lots of other distractions with disclosure statements and solicitation procedures and other things that to us will take the parties eye off the ball which is trying to come up with a settlement focused on what the aggregate liability is here.

So in our view, fundamentally, the paths that the other side is proposing are just in a way, it's just scorched earth litigation that's going to do nothing in our view but drive the parties farther apart.

Next slide, please.

So I'm not going to spend a lot of time on the next few slides because I imagine Your Honor is familiar with this. But we're basically proposing concurrent paths. On the one side, on the left here is the way we're envisioning an estimation path. And we've broken it into two phases, one being what we call a medical science phase, the other being a quantification phase.

And the reason to do that is we think it breaks the issues up in a way that makes the litigation more manageable. It also has the benefit of allowing the discovery with respect to the second phase, the quantification phase, to go forward while we're also making progress on the medical science phase. So this is one of the features that allows us to, in our view, dramatically shorten the process.

So on the left, it's really pretty straightforward what we're thinking about in terms of the medical science process. We have the expert disclosures. We have exchanges of expert reports. We then have expert discovery. And then we envision two separate hearings, one for the ovarian cancer claims and one for the mesothelioma claims because the science is different with respect to those. And then there would be post-trial briefing and preliminary findings.

And so, you know, our belief is that the parties because of their experience in the tort system and the fact that they've tried a number of cases will be in a position to

move forward with the medical science piece of the case very quickly. And so if you had a chance to look at the timeline, you'll see we started virtually immediately. If we had a go from the Court with estimation this week, we believe the parties are in a position within a couple of weeks to do the expert disclosures and get started right down the path so that we would have these hearings before the end of the year.

But at the same time, and hearing what Your Honor was saying, we thought about these independent experts. And I'm going to come back to this. We have them inserted into the estimation process. But maybe more importantly, we were thinking that we would have a separate process moving forward with them, as well, where the parties would be initially in this first phase presenting to these experts their preliminary estimation cases, both on medical science and quantification, and that during this same time period, the phase one time period, these court experts would come back having considered the preliminary cases made by both sides and they provide their preliminary views.

And to us, it's important that we have experts who are experts in the subject matter because we believe that the prospect of the parties having to appear in front of subject matter experts to explain their positions and make their cases and then having the opportunity to hear the benefit of their views, that will have a dramatic effect, we believe, on

settlement negotiations.

And so that's part of the process. And you can see we have the mediation sessions are inserted all throughout on both sides with respect to both sets of processes. But the idea is that we'd be using these experts for that benefit. At the same time, they're also going to be sitting in on the estimation process and providing information to the Court, as well, with respect to the scientific issues and the economic issues that will be presented.

Next slide, please.

So phase two is very similar in terms of the estimation. The sequencing is very similar. Here, there is a fact discovery that we contemplate. Again, that discovery would start immediately even during the medical science phase. We've talked about what we call the personal injury questionnaires and the trust discovery which we think is discovery that's key here. We think a number of courts have recognized that it's been found to be relevant and of real importance to addressing the merits of the claims.

But, again, if you look at the sequencing very similar the exchange of expert reports, the expert discovery, then you have the quantification hearing on that side. This still all fits in less than a year under the schedule that we're proposing. And obviously, we're just throwing out dates at this point. But we tried to think through what the sequence

would look like, what would be a realistic time frame considering the amount of work involved. And it seem to us it fits, it fits within the year time frame.

And then, of course, post-trial briefing, closing arguments, and then a court ruling. And, again, all of that on that side will be informed by information provided by the experts who not only will be listening to these presentations on the right side of the slide but also will be sitting in receiving the evidence, reviewing the reports, sitting in in the hearings, and the like, with respect to estimation.

And then going to the right side of this slide, this we call this independent expert process would continue into the second and third stages. We had the first stage where the parties make their preliminary presentations in the fall on both issues, both medical science and economic issues. Now in the second stage, we're further along in the estimation process and, of course, I'm assuming there's not been a settlement by then.

Now the parties are making updated case presentations now having the benefit of reviewing the other side's expert reports, having now conducted discovery. They can update their positions, and then we would ask as part of this that the court experts would come back and provide their updated views based on these new presentations made by the parties.

And then the third stage would ultimately come after

we have the hearing but before there's a ruling where the court experts now having sat through the entire estimation process, still no settlement, would express their final views and where they are on the issues that have been raised by the parties. And that would come before a court ruling. It would create like a final opportunity before a ruling for another mediation session in an effort to settle.

So we've got these three phases of the expert process, each one followed by a mediation, and then we have at the same time the estimation moving forward with mediation sessions inserted into that process so that at all these points, the parties have opportunities to come together based on better information and a better understanding of their own positions and the positions of other parties to see if we can't reach a settlement.

Next slide, please.

So, again, I won't spend much time on this, but this was our proposed timeline as you look at it from a phase-one perspective. And the keys are here I think that we're projecting an ovarian hearing in November, a mesothelioma hearing in December, and then post-trial briefing takes us into January with the Court's preliminary filings -- findings, I'm sorry, in mid-January. And you can see again in the boxes underneath where we insert in that independent expert process.

Next slide, please.

And then a similar timeline for the phase two, the quantification phase. You can see it's again sort of the same sequence of events. We get to a quantification hearing under our proposed schedule in June, then followed by post-trial briefing and a court ruling sometime in July or later. And then underneath, we're showing the other two phases, phases two and three, how those timelines would fit in.

Again, you can see that these are coming after developments in both medical science estimation and the quantification. And then ultimately, after the quantification hearing is where the experts would express their final views that would come before the post-trial briefing and before any closing arguments. So, again, that's just fundamentally the way we're thinking about this.

We're trying to complement the mediation, and we're trying to take advantage of the fact that we have subject matter experts who should be able to facilitate settlement because they're going to be assisting the parties in firming up their views and finalizing their views. And then, ultimately, they're obviously assisting the Court, as well, in terms of making the ultimate ruling on estimation.

Next slide, please.

So I've probably covered a fair amount of this already. But if you look down on the left, we're using estimation, we believe, in a way that will facilitate mediation

and drive consensus. We've integrated mediation at what we think are the key stages to build momentum towards an agreement. And then we're using independent experts to develop an understanding by the parties of their positions and the other parties' positions and hopefully providing really critical feedback for the Court as it assesses the positions of the parties.

And then on the other side, we think is sort of a list of some of the fundamental problems with what the other side is proposing. Really from our perspective, this idea of litigating non-representative cases in the tort system, it serves no purpose and we haven't really heard a justification yet by the other side for what benefit that serves other than suggestions that it will just give them leverage.

The cramdown process from our perspective, that doesn't make sense, particularly in a situation like here where there's been no prior discovery. There's been no agreement on liability. There's been no estimation on liability.

And, you know, we think this is all just going to drive the parties apart. We'll just be engaging in what we would view as unproductive litigation, litigation that's just going to create needless distractions, unwarranted expense. And then ultimately, I think what's most important maybe is the last two boxes, which is we believe our approach will maintain the focus of everyone on the issue we have to solve, which is

the aggregate liability here, whereas, the other side's proposal as best we can tell just disregards that. I mean their plan as we understand it in their proposal is just pay-as-you-go, it's irrelevant what the aggregate liability is, put us in control of the trust, and we'll just run the claims through the trust. So to them, it's irrelevant apparently what the aggregate liability is.

And then at the same time, they're apparently going to propose claim values but do it in a way that minimizes or impairs, I should say, our ability to present our case as to why their claim values are likely inflated, which is what we expect and probably materially inflated.

Next slide, please.

So I'll go through these quickly. In these cases, I mean we know what the principle issue is. We know what the central issue is. Its been identified by many courts over the last 20 years. And here in USG, the court said the court's aware that the tension between the positions articulated by the parties concerning the proper mode of valuing the debtor's asbestos liability reveals a fundamental, perhaps the fundamental divide between the parties. Indeed, the issue may lie at the heart of all asbestos bankruptcies.

And through the years, we know that that's true.

Next slide, please.

And if you think about it, this issue that we want

the parties and this process to focus on, it is at the center of everything in the case. It's the issue that basically is critical to plan negotiations. It's central to the mediation. It's central to the formulation of a plan. It's ultimately central to the claimants who have got to decide whether any proposed plan, whether by one side or the other, is acceptable to them. It's information that's important to them.

And it's also what allows the Court ultimately to determine whether a plan that's being proposed is in the claimant's best interest or not. And any process, in our view, whose intent is to basically minimize the ability of the Court and the debtor to test the proposals, to shed light on the proposals, basically is -- undercuts everything in this case. It's going to put the Court in a position and the parties in a position where they really can't do their jobs the way the Code contemplates they should be done.

Next slide, please.

All right. Let's go to the next slide.

Next slide, please.

So Section 502(c), the statute which provides the authority for the estimation of claims, is mandatory. We've highlighted the key language that says it shall -- "There shall be estimated for purposes of allowance under this section any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the

administration of the case."

Next slide.

We have a number of -- I won't go through each of these, but there's many many cases where estimation has been authorized, and they've been authorized for exactly the reason we're asking for it here. You know, situations where courts were faced with literally thousands of unliquidated claims and, you know, clear recognition by these courts that liquidation of those claims in the case would cause undue delay. You see it in G-1, you see it in Federal-Mogul, and most recently, in Bestwall.

Next slide, please.

I mean estimation has been ordered, you know, I think basically uniformly any time it's been requested in asbestos cases. Here's a long list on this slide. There's many others that we could have added. I mean years ago there was never even any opposition to this, you know, unless there was an agreement when it wasn't asked for. Now it's become a little more common in the recent cases for the claimants to oppose estimation for basically the reasons you're hearing about it today and reasons personally I haven't fully understood.

But from our perspective, we're in a court proceeding. One of two things need to happen from our perspective. Either we negotiate an agreement, which we've been trying very very hard to do, or there needs to be a

process by which the parties' due process rights are respected and they have an opportunity to have their day in court as to what the aggregate liability is that needs to be addressed in the bankruptcy case.

THE COURT: Now I'm sure you're going to address it.

MR. GORDON: Yeah.

THE COURT: Their -- TCC's contention is that if we were to even go down the path of estimation, it could be part and parcel of a confirmation hearing.

MR. GORDON: Right.

THE COURT: So that we're not ignoring that obligation, but why have two separate lengthy convoluted proceedings.

MR. GORDON: Well, I mean there's a couple of --

THE COURT: Does it work as part of confirmation?

MR. GORDON: Yeah. I think there's a couple of answers to that. One is unlike cases where that's been done, this is a case where we've had absolutely no discovery.

There's been no proceedings at all with respect to this issue. And now you're talking about I think under their proposal, given their timeline, compressing all that into a much shorter period of time which to me clearly says we're not going to get PIQ discovery, there won't be time, we're not going to get Trust discovery.

And we know that they strongly oppose both of those

types of discovery in every case. So it's a way from our perspective to avoid all of that. And we think that's definitely a problem.

The other issue is that you're putting the cart before the horse in the sense that, as Your Honor knows better than me, a confirmation process is very expensive. And there's lots of pieces to it. There's disclosure statement. There's solicitation. The noticing anymore by itself costs millions of dollars. It takes time.

And you're basically saying we're going to go through all of that before we have any ability to assess whether or not -- whether there's competing plans or one plan, whether any of these proposals is workable or not. And you're going to be spending a lot of time focusing on those issues as opposed to actually zeroing in on the issue that makes the difference. So it's really those two things.

So I mean if you're talking about I guess a confirmation process that bakes into it an estimation process that gives us the rights to pursue the discovery that we think we're entitled to, discovery that goes to the merits of the claims, basic information that you would need to assess the merits of the claims, that's potentially doable.

But, again, it seems wasteful to do that because you could get to the end of that and then realize we don't have anything that's going to move forward here. Or the parties may

be in a position based on what happens to amend their plans, then you're going to have to re-solicit anyway and kind of start over again with disclosure statement and the process. So --

THE COURT: But the history of discovery disputes relative to the questionnaires, the --

MR. GORDON: Yeah.

THE COURT: -- the trusts and the payments would seem to disrupt the timeline that you suggest. It's a timeline that seems dependent upon almost all the parties working in sync. And what is there to suggest that that's going to happen given the ratholes that we've seen in other cases as far as contentious litigation over the questionnaires and the forms and the like?

MR. GORDON: That's a very good question, Your Honor.

In some respects, it's a matter of if you take the parties at their word. I mean what we hear at every single hearing is that this is an emergency, time is of the essence, we have to move, we have to move quickly. And if that's really what the sentiment is, then we should be able to do that a lot faster.

The other thing is if orders get entered, the order should be respected. And I believe that this Court has the power and the ability to enforce those orders and make these things happen so that we're not in such an intractable delay.

But I mean having said all that, at the end of the day, I obviously hear you. I think we tried to be clear that we're assuming that parties are motivated to move quickly, that they're acting in good faith, and that they'll abide by court orders. And if we're wrong about any one of those three things, then obviously the process could be drawn out.

But we do think -- I mean I can't overemphasize from our perspective, the discovery is very important. It's the information our experts need to do the analysis necessary to present our case.

And I think, you know, the question for the Court ultimately will be it's a decision between do you try to abbreviate the schedule in some way that potentially impairs the company's ability to make its case or do you do everything you can to give us the opportunity to provide us with the opportunity to obtain the information we need and then do everything in your power to ensure that the schedule is maintained as best as it can be, because, you know, at the end of the day, to us one of the benefits of estimation is that it imposes a process.

I mean Your Honor would be authorizing the estimation, you'd be approving presumably a case management order that sets all the deadlines that sets the process. And, you know, we believe that you have a significant ability to influence the course of events and hopefully to make that

process run on time.

Did I answer your question?

THE COURT: Yes. Thank you.

MR. GORDON: Thank you. Next slide, please.

This is kind of an obvious slide here, Your Honor. Obviously, given the number of claims we have, it would be literally impossible to have any kind of allowance process with respect to the claims.

Next slide, please.

All right. Next.

I mean some of this, you know, these issue have been kicking around for a long time. I mean this comes -- slide comes out of the A.H. Robins case back in 1986. And here where the Court said:

"The interest of all the claimants and the public interest in a reasonable and fair reorganization combine in favor of an effort at an estimation of the Dalkon Shield claims as a basis for formulating a plan and as a possible step in working out a mechanism acceptable to all the claimants for a dispute resolution of their claims without burdening the estate with a tremendous expense of endless litigation."

So, you know, this concept of estimation, which really until recently has been relatively routine, goes back a

long time in mass tort claims, and I think for good reason.

Next slide, please.

You know, there's been disagreement with the TCC about the impact of estimation, but we think the track record's very clear on this. And it's just demonstrated by some of the cases that we have up on the slide here.

The G-1 case, there was an agreement reached before the estimation hearing was completed.

Grace, the agreement was reached shortly before the estimation hearing.

USG, agreement was reached after the court-ordered estimation.

Garlock, agreement reached after the court had issued an estimation decision.

And then Specialty Products, the same thing.

And both Garlock and Specialty Products which filed around the same time had a similar experience in the sense that the cases were making no progress or very little progress, the claimants were repeatedly telling the court they would never reach an agreement. And ultimately, in both cases the courts approved estimation and the estimation ultimately, you know, in our view, and I think it's born out by the record, was the key factor in getting the parties to a settlement.

And it's interesting to me that in Specialty Products, the court ultimately or the parties ultimately

settled at an amount below the estimation amount. And in Garlock, it was the opposite, the parties ultimately settled in an amount that was above. But if you look at the record in both cases, the estimation was key to assisting the parties in getting to an agreement.

Next slide, please.

Now it's interesting there are a couple of cases that we found where courts did employ an estimation in connection with mediation. And here, you can see in this Mona Lisa case, the court said, In these adversary proceedings, mediation followed by an estimation is the most efficient and economical method to liquidate the claims and proceed toward confirmation.

And next slide, please.

It's a similar sentiment in the next case. This North American Health Care case, It would take years to liquidate, if relief from stay were granted in the state and federal court actions by the tort claimants against the debtors proceeded in their ordinary course, the court agrees that estimation is not simply optional in this case, that it's required. And there, there was a two-step mediation estimation process.

Next slide, please.

So we see a number of benefits in proceeding with an estimation. It will enable the parties to gather information that they need to make their cases. It will allow them to

better understand and evaluate the strength of their own case and the cases of others. It will require the parties, as I said before, to support their position, and they have to do so within a timeline that's been set by the Court. It would allow the parties to understand realistic bookend, supported bookends for the liability, within which a settlement may be possible.

In this case, it would also allow the parties to better assess amounts that have already been discussed in the mediation to date. And then, with what we're proposing, it would provide the parties with the benefit of the views of independent experts and then ultimately, if we get that far, with the Court's impartial views about an estimation of the liability.

And then it would also provide the claimants and the Court with information necessary to evaluate any plan. So, again, it's important for the claimants because they ultimately are the ones that would have to vote on any plan proposal.

Next slide, please.

Now there's lots of things that the other side has been saying about our proposal, which frankly they just miss the mark. We have not proposed that the estimation would set the amounts of the distributions. I think we've been very clear about that. We have not said that the estimation would be used to set a hard cap on the amount of trust funding.

What we're proposing doesn't violate anyone's

constitutional rights. It preserves all due process rights to address the issue that's key to resolving this case. And they've also argued that our approach will cause significant delay.

And, you know, obviously, what we're outlining is a process that we think will take a year and, obviously, I hear what Your Honor is saying about a concern that we may have -- it may be prolonged based on discovery fights. But I think what's important not to lose track of is we've tried to carefully design the process in a way that would facilitate settlement at virtually every step, including as early as the fall of this year.

And so the real purpose of this, it's not to set hard caps, it's not to file a cramdown plan, which I guess is what's been suggested. But instead, it's to drive a successful mediation. It's to drive a consensual resolution. And I think everyone in the courtroom should be able to agree that that's the result that's in the best interest of all parties and particularly the claimants.

Next slide, please.

Next.

So here, just a few points on this slide and talking about our process. Again, we think it's one that the way it's designed would move quickly, you know, particularly, on the medical and science side.

There's been arguments made that we're just trying to re-litigate Judge Wolfson's Daubert ruling. That's not true. And one of the things that's important to recognize, and I think the other side acknowledged it in their reply brief, is there's been significant developments we believe in the scientific world since the evidence that was presented to Judge Wolfson. And I think that evidence -- I won't get the date right, it either dates back to 2020 or 2019. Obviously, the ruling was later than that, but the evidence, we're talking about at least a couple of years or longer of developments.

But the other point is, and you'll see this in upcoming slides, we're not asking for like -- this wouldn't be asking for an up or down ruling on whether, you know, the science shows this or science shows that.

But what it will do is it will put the Court in a position and the independent experts in a position to determine whether these claims are strong or weak or somewhere in between, which is, you know, very important information that Your Honor would need, the experts would need to evaluate ultimately what the estimation should look like because if the view based on the medical science -- and that's what informs these claims -- is that the claims are weak, then you would expect the quantification would be on the low side.

On the other hand, if you think there's a strong relationship between the use of these products and causation of

this disease, which we don't think the evidence will show, then you would come up with a higher estimation. But in any event, the issue to us is very different than what Judge Wolfson was dealing with in the Daubert -- in her Daubert ruling. And, again, lots of developments have occurred since the evidence was presented in connection with that.

And, again, I think phase two, I've covered all of this. In both cases, subject matter expert assistance to help out with the process and to also help the parties settle.

Next slide, please.

And, again, I think I've largely covered this on the overview of the expert process. We did plug in some dates here just to give you a sense for how this works. So in that first stage, that preliminary positions on both medical science and quantification, that does happen so that that occurs in the fall, there would be actually feedback provided in the fourth quarter of this year, which is not that far away.

And then you can see phases two and three, we're moving then into the second quarter of 2023. So, you know, this is something on the phasing process with the experts, their actual assistance in trying to help the parties get to a deal. This would occur very very quickly. All three stages, frankly, would move pretty rapidly.

Next slide, please.

This slide is intended, Your Honor, just to reinforce

the point the discovery we're seeking really is critical. And, again, I understand Your Honor's concern about the discovery, but the question ultimately of estimating this liability goes to the merits.

And the other side in these cases takes the position essentially that the merits are irrelevant. I don't know what their approach will be exactly in this case, but in other cases, their position has been merits are irrelevant, all you need to do is take a look at what settlements have been paid and extrapolate from those.

And the problem with that, of course, is that because there's so many of these cases, most companies don't have the ability to litigate each and everyone one and so they settle many many cases just to avoid or reduce defense costs. Well, that doesn't have anything to do with liability. And then, you know, we've learned from other cases that settlement were reached based on an absence of key evidence, evidence that was withheld by the plaintiffs in many cases. And we've seen this in the asbestos side and the mesothelioma cases.

And one of the primary reasons to get the Trust discovery, particularly with respect to the meso claims is to determine whether that happened here. And that to us is extremely important evidence in the event that the other side would come in here and say all you need to do is use the company's settlement history and extrapolate, and that's how

you determine the liability.

To us, that's problematic for a lot of reasons, but it's particularly problematic if in fact there is evidence which has been shown in other cases that those settlement were made within complete information because evidence was withheld.

THE COURT: Just a question.

MR. GORDON: Yeah.

THE COURT: It actually goes to the other issues, the extension of the preliminary injunction, the stay relief. But the new data available according to Johnson & Johnson and the debtor --

(Phone ringing)

THE COURT: All right, we've had -- my phone's gone off. We've had a few phones. By now, everybody should know to take their phones off. All right.

But if we were -- if I were to release some or all of the dozen identified cases, does that new science come into play or is that -- given that discovery's already been fixed, they were trial ready. Do those reflect any of the new science as proffered by the debtor?

MR. GORDON: You know, that's a specific question.

THE COURT: And maybe you need to --

MR. GORDON: Yeah, I might need to consult on that.

THE COURT: But when we get to the other issues --

MR. GORDON: Okay.

THE COURT: -- I'm curious as to that.

MR. GORDON: Okay. We'll consult on that.

I mean there's obviously other problems that we have with the idea of releasing cases that we view as unrepresentative, but I obviously hear the question you're asking.

Okay. Next slide, please.

Again, I won't spend any more time on this. The only difference between this slide and the earlier slides I showed you was I wanted to be more clear in terms of where the mediation sessions as we were thinking about them get plugged into the estimation process. And, again, we were thinking that these were some of the key points. It's after the parties have exchanged expert reports. It's after each of the hearings. It's after briefing and preliminary findings, you know, key developments in the process.

Next slide, please.

And then, again, this just shows where mediation plugs in with respect to the expert process, that parallel process that I described earlier.

Next slide, please.

Now I thought this was a helpful quote from Judge Hodges' opinion in Garlock. It helps to explain hopefully the point I was trying to make earlier as to what the role of a medical science case is and why it's important here

notwithstanding the Daubert ruling. You can see what Judge Hodges said:

> "In the tort system, it would be necessary for the jury to resolve issues of causation in a binary fashion yes or no. But here in making an aggregate estimation, that is not necessary.
>
> "Rather, it's sufficient for the Court to find that predominantly Garlock's products expose people to only a low dose of a relatively less potent chrysotile asbestos and almost always in the context where they were exposed to much higher doses of more potent amphibole asbestos. So across all potential claims, Garlock's liability for mesothelioma should be relatively small."

So you can see the benefit that Judge Hodges derived from the medical science evidence that was presented to him. And this went into the relative toxicity of chrysotile asbestos versus amphiboles and the extent to which an individual could have been exposed to this asbestos and the fact that there were other alternative exposures. So you can see how that helped inform the estimation decision by Judge Hodges.

Next slide.

So, again, I mean fundamentally with respect to the Judge Wolfson Daubert ruling, here, unlike that, the Court and I guess the independent experts as well are being asked to

review the strength of the claims. Are these strong claims, are they weak claims? Is there a strong association between the product and incidents of disease or not? Is there a significant risk or an incontestible risk?

And then we've got the developments and the science and literature that I mentioned. And the other thing just as an aside on Judge Wolfson was that that ruling did not cover mesothelioma.

So next slide, please.

And then this is probably stating things you already know about quantification. There's a number of issues that will have to be addressed in connection with this phase, the first of which will be what's the appropriate methodology for quantifying a liability like this. Is it settlement history? Is it what we call legal liability which is a determination based on the assessment of the merits of the claims? Is it some other approach?

And, of course, ultimately, you have to get into the number of current claims. And, you know, this is one I'll pause on for a moment. One of the -- one way in which the PIQs have been very very important in these cases is they've shed a lot of light on the number of claims. And I think I have a slide coming up here that shows the fact that in each of at least three cases that we've cited.

In the wake of the PIQ information, it was determined

that the number of pending claims that had to be addressed was substantially less than what was indicated by the companies -- these companies' claims databases where they just had -- were tracking every lawsuit that had been filed in many cases, pending for a long time, in some cases more recently. And as it turned out when the individuals were asked do you have a claim or not, a large percentage said no or were not pursuing it.

Then, of course, you have to project the future claims. You got issues about inflation and discount rates to bring those claim values back to present value. But ultimately, the focus is on quantifying the debtor's liability.

Next slide, please.

Okay. Again, and this is just an attempt to show the phase two process a little differently plugging in the mediation, what we thought about where the mediation sessions would fit in.

Next slide, please.

And same thing on the second stage of the expert process, the dates we're thinking of and then where the mediation would fit.

And then next slide, please.

Same thing on third stage.

Again, the idea here in this process is the parties have made their case, they've heard the views of the experts.

We think about it as preliminary views, updated views, final views. And after each set of views is communicated, there's a mediation session following that.

Next slide, please.

These cases reinforce our point that we believe we should be permitted to develop the evidence that we believe is necessary to make our case for estimation. And here, it's -- the discovery we seek is discovery we believe is critical to assessing the merits of the claims.

Next slide, please.

So here's what I alluded to earlier, Your Honor; cases where PIQ discovery has been ordered. And you can see across the top the number of cases where it's been ordered. It was interesting, Judge Hodges in Garlock recognized the importance of the PIQs. And as he put it, he said the data gathered is the freshest and most reliable data available; whereas, historic claims data can be stale and not accurate. And what's what was happening in all these cases.

And then if you look at the information below for Garlock, Bondex, and Bestwall, I mean look at the number of cases that changed, the pending claims that were no longer valid -- I mean 2,000 of almost 6,000 in Garlock, about 35 percent; Bondex 1,500 out of 3,500 at 43 percent; and in Bestwall with a process that's just come to a conclusion, it's almost 65 percent.

And if you think about that, these are cases that have, although they had thousands of claims, they didn't have 40,000 claims. And so to my mind, this just illustrates the importance of these questionnaires. And these questionnaires really are just seeking very basic information about the claims, the first question of which is do you have a claim, what's your disease, and other information that we need. Are there other exposures, have you received other recoveries with respect to your claim, that sort of thing.

Next slide, please.

So we've heard it said many times in their pleadings that LTL is just following a script in requesting estimation and indicating it wants this discovery, that this is all intentional on LTL's part to create delay. And I mean, honestly, what they're using to support this are mischaracterizations of what's been happening in the cases in North Carolina. There's just no other way to say it.

In Bestwall, I mean literally, there's been opposition by the claimant representatives at every turn with respect to estimation. They've litigated and re-litigated the issue of estimation. They've litigated and re-litigated efforts to narrow the scope of estimation. They've litigated and re-litigated opposition to discovery.

It's just one thing after another. They are the ones that continue to request delays in the process. The company

has not been requesting delays. And it got to the point in Bestwall where their conduct was sanctioned. And it's been sanctioned more than once for failure to obey court orders.

And, unfortunately, the situation is much the same in DBMP and Aldrich, although there hasn't been any sanctioned conduct so far. But, again, estimation was opposed. The claimant representatives re-litigated the question of estimation even after it was decided against them in Bestwall. In Aldrich, they re-litigated estimation after it had been decided against them in both DBMP and Bestwall. And they've litigated against the discovery that Your Honor mentioned, which Judge Whitley in those two cases ordered over their opposition. And there's been continuing refusals to negotiate.

Now there's efforts in DBMP and Aldrich to pursue other litigation to effectively dismiss the cases, but that's the true story of what's happening in these cases. There is no script by either Jones Day or any of these companies to delay the process. All of these companies, like LTL here, have a strong desire to resolve the issues as fast as they can and move forward. And it's just been significant opposition. It just is what it is.

Next slide, please.

So based on our review of the other side's proposals, it seems that there's three fundamental paths that are being suggested. One of the pleadings just came out and said it

outright, nothing should be done until the Third Circuit decides. You should just pause the case. I think that's inconsistent with what Your Honor indicated your intentions were.

It's certainly not our desire. Obviously, the Third Circuit will do whatever it will do. It will do it on whatever timeline it does it. But in the meantime, we would like to see this case move forward.

And then, of course, the next two options I covered, you know, one is to lift the injunction and proceed to trial on a subset of cases that the other side is selective, they're not representative. And importantly, part of that is it shuts off at trial. They don't allow the appeals to go forward. And they know full well that the company's been very successful in the appeals. I think some $3.3 billion or so was saved as a result of reversals on appeal.

And, in fact, last week there was just a significant reversal in a New York mesothelioma case where the court, the appellate court in New York found that the plaintiffs did not make their causation case. The evidence did not support it, and that case was reversed.

So it's very telling to us. It just shows how skewed and prejudicial that idea is that initially would be 90 cases or up to 90 to be heard in a year which would be impossible for the company to defend. Now it's only 12 cases that they want

to try before the end of the year in a few months. How is the company even going to be able to do that. And, of course, that ignores all the preliminary issues that would have to be dealt with in those case. But, again, no appeals. That's not covered.

And then, of course, the confirmation path that I've talked about, which again, based on what I've seen so far, seems designed to really shortcut our rights to make our case with respect to the liability.

Next slide, please.

So we've covered some of these points before. This idea of litigating one-off cases is not going to assist the mediation process or settlement. It's not going to provide any new information to the parties based on all the litigation that's already occurred. And it's not going to provide any information at all about debtor's aggregate liability which is what we're here in this courtroom to resolve.

It will simply be a distraction. It will take much more time than the other party's indicating. And the Court won't have any control over those cases because those cases will proceed on whatever schedule those courts will put them on, and it will just be outside of the province of this Court and the control of this Court with respect to schedule moving forward.

Next slide, please.

I don't know if it's worth saying much more about this, but it appears that the plan that the TCC contemplates is a pay-as-you-go plan. It just -- although the pleading suggests that this is not a limited-fund case, they basically say -- I think they're saying the funding agreement's just made available indefinitely for claimants to pay themselves under a claim and control trust values that we believe will be substantially inflated.

Again, we -- you know, we have concerns about an expert having only 90 days to review claim values that, you know, limit -- any limitations on discovery. And then at the end of the day, as they say that the claimants are free to reject the claims anyway and return to the tort system. We have no way of assessing how often that might happen, but we could end up right back pretty much in the same circumstance we were in at the time we filed for bankruptcy, you know, paying hundreds of millions of dollars in fees and indemnity and the like per year.

Next slide, please.

So ultimately, Your Honor, we would just say that we believe -- you know, we're in a court proceeding. We believe we have the right to be heard on this issue of the aggregate liability. We have the right to make our case. We have the right to pursue discovery and particularly discovery that's been sought in many other cases and authorized in many other

cases.

And that's important because we think we should be allowed the opportunity to basically weed out claims that have either been abandoned or otherwise invalid or baseless. And that's particularly important here given the large number of cases that we face.

Next slide, please.

So all I'll say fundamentally about this slide is we think any plan that overpays claimants is ultimately not confirmable and that -- again, that we should have a full opportunity to challenge whether in fact the plan does overpay claimants. And so if any kind of process is allowed to go forward, as I said earlier, it seems to us that it has to be done in a way that our rights to pursue the discovery we seek are fully preserved.

Next slide.

So, Your Honor, just to sum up, we think that what we've offered here, this concurrent process or hybrid process, provides the best resolution for reaching a consensual resolution in this case. And we think we've designed it in a way that will maximize the prospects that that would occur in the near term.

And we're hopeful that the process will complement the work that's been done in mediation to date, that it will re-energize the mediation process, that it's going to provide

critical feedback to the parties from subject matter experts, and that it will impose a timeline that's again largely controlled by Your Honor that will mandate that the parties have to focus on the issue and they have to support their positions, again, as opposed to just pulling numbers out of the air or taking some other approach. They actually have to build support for their positions as to what the company's aggregate liability is.

And, you know, we think in stark contrast to that, again, the TCC's proposals would impede the mediation, drive the parties further apart, really provide no new information. And what we're most concerned about is that our rights to make our case are put in jeopardy.

Your Honor, if I could have a minute, I see a note.

THE COURT: Sure.

MR. GORDON: -- that's here.

THE COURT: And if I can explore one --

MR. GORDON: Sure.

THE COURT: -- area, one that's been raised in the TCC replies. If you can go to the prior slide, the fair and equitable.

The issue would be whether over -- one of the issues I think the debtor is raising is that overpayment of claims would not be fair and equitable to the debtor -- paying claimants more than they are entitled to. Now the harm from

that would be visited upon the debtor and, in theory, I guess the debtor's equityholders. The equityholder in this case -- and you'll have to correct me if I'm wrong, trying to understand the organizational chart -- New JJCI.

MR. GORDON: Right.

THE COURT: New JJCI.

MR. GORDON: That's correct.

THE COURT: So given that the debtor operate simply the royalty stream in its subsidiary, what is the harm I guess from an economic perspective to the equityholders in overpaying? You know, what's the risk out there?

Ordinarily, you're saying the value of the equity shares would be diminished --

MR. GORDON: Right.

THE COURT: -- the equityholders' interest. But here we're talking about JJCI has an equity interest in LTL which is not operating. What is that equity interest? And, again, maybe that's a confirmation issue one day, but it seems to have a bearing on these arguments as to the --

MR. GORDON: Right.

THE COURT: -- a need for estimation.

MR. GORDON: Yeah.

Yeah, I obviously saw that argument in their brief, and that's something we'll think more about. But I guess the way I think about it, I think about that in a more basic level.

It can't be, as the Committee suggests, that a plan could be crammed down in a situation where values that are proposed to be paid to claimants are not tested. They're not evaluated.

Are they overpayments? Are they underpayments? Whether it's a fair and equitable, whether it's a question of whether the plan was proposed in good faith, whether it relates to some other standard, I'm not I guess prepared today to give you a sort of final view about that.

But to me, it's just beyond belief that in a case like this where the purpose of the filing is to determine a reasonable and fair resolution of the liability, it can't be that the resolution is any number that the claimants says it should be with no party, whether it be equity or the debtor or affiliates or anyone else, having the ability to weigh in on whether that number is unfairly inflated.

So I'm very confident that there's a number of reasons why that doesn't work. I think fair and equitable works because of the way the funding agreement is. But I recognize the argument. It is confirmation, but again it's beyond belief to me that that could possibly be the case that Your Honor would be put in a position where you would just be saying, well, the -- because what they're saying fundamentally is the claimants voted for it and there's a funding agreement and that's the end of it.

And that's unimaginable to me that in a court of law,

that could happen without an evaluation of whether that's a fair and appropriate resolution of the liability.

THE COURT: Thank you.

MR. GORDON: Thank you.

THE COURT: And is there anything else you --

MR. GORDON: Well, the only thing I was going to add, and this is maybe more apropos to the PI, but I had said before I couldn't recall exactly what the evidence was that was in front of Judge Wolfson with respect --

THE COURT: Right.

MR. GORDON: -- to the Daubert. It actually dated back to 2018, so I was two years too late on that.

And then it's also the case that there were cases that have been tried with the updated science, just so Your Honor knows that. And this indicates that the company won all four cases tried in 2021 with the benefit of the updated science. Each was a unanimous defense verdict.

So that's just another way of saying, and maybe Your Honor was suggesting this or maybe not, I'm not sure, but we don't need to try new one-off cases on the medical science to have information with respect to the significance of the science. There's already at least four cases where there have been trials with the benefit of that science.

And I think that's another way of saying that the -- you know, the Daubert ruling obviously was an important ruling

in the MDL, but it's based on developments. In our view, we view it as dated.

THE COURT: Fair enough.

MR. GORDON: Thank you, Your Honor.

THE COURT: Thank you, Mr. Gordon.

Mr. Molton, before you start -- or you can get to the podium -- I just want talk about scheduling so that everybody can appreciate where we're going today.

We're going into the afternoon, needless to say. Hopefully, just the afternoon. We are going to take a break at 12:30. We'll have a lunch hour 12:30 to 1:30, roughly. I would anticipate we're not going to get to the PI issue until after lunch. Given that, we're going to have the TCC's presentation and other parties both here and maybe on Zoom.

So the goal would be before lunch to complete the estimation portion of it, if we can.

Ms. Cyganowski?

MS. CYGANOWSKI: Yes.

Your Honor, i would ask you to respectfully consider reserving decision on the estimation until you've heard argument on the PI.

THE COURT: Already in my mind.

MS. CYGANOWSKI: Thank you.

THE COURT: I want to get the full picture.

And I don't want to eat into your time.

MR. MOLTON: Your Honor, may I approach?

THE COURT: Sure.

Thank you.

Good morning, Mr. Molton.

MR. MOLTON: Good morning, Judge. Always a pleasure to be here.

THE COURT: Thank you.

MR. MOLTON: Beautiful July day.

David Molton for the Talc Claimants Committee. I'm with Brown Rudnick, and with me are all my co-counsel.

Judge, we've heard a lot from Mr. Gordon, much of it a repeat of what was in their pleadings. I'm not intending here to repeat what's in our pleadings. I think everybody had the opportunity to read all the estimation pleadings, and I think we all had a good time doing so.

In any event, Judge, you know, also I will not be conflating as much as I can what Ms. Cyganowski is going to be talking about with what I'm going to be talking about. But I'm certainly here to answer any questions you may have to the extent I miss a subject or feel that it's been addressed in the pleadings and you have a question about it.

Your Honor has noted I think two hearings ago or last full hearing, as well as during our last Zoom hearing, that today's going to be an important day in the case. We understand that, and that's why you saw all of the

thoughtfulness go into the TCC's pleadings as well as the other pleadings from plaintiff constituencies.

Before I go on, I want to note one point that I think is important from our perspective and really informs everything that we think about and all the proposals that we've made, including the plan opportunity. And I think it is a real opportunity that we're asking Your Honor to let us go free and let Your Honor see it, let the world see it, let LTL and J&J see it.

This is a full-pay case, and I think it's important to note that. We've all gone through that before from day one. it should be a full-pay case. We've got a funding agreement that Mr. Gordon just referred to that, yes, is the centerpiece. Assuming this case goes forward and the case is not dismissed -- and we're not talking about that today, Judge -- but there is a funding agreement that many representations were made about, $61 billion.

And we've looked at that, and we're using that in terms of how we're proposing to move this case. The debtors may not like it. They may not like it at all, but they're the ones who manufactured the foundation for this architecture. They did it, and they made the representations of what it is. They made the -- they've put in the provisions as to $61 billion or plus.

We're a fork in the road, as Your Honor mentioned.

We've got two roads, two roads in front of us, Your Honor, again, putting aside what or what not the Third Circuit will do. We've got a road to nowhere, and the road to nowhere is what my friend Mr. Gordon just laid out to the Court with all of these graphs, those pretty pictures, these schedules, you know, a two-phase, in those phases, different parallel proceedings, et cetera, et cetera, et cetera.

Your Honor, simply put, it's a road to delay, it's a road to nowhere. I do want to go to a point that Mr. Gordon made when he said that our proposal, our view of the case, our view in accordance with what Your Honor asked, how do I move this case. Move it either to an exit, maybe on a contested confirmation, or move it in a way that gets you to an exit with a consensual confirmation.

Mr. Gordon characterized what we've proposed as unproductive litigation. Well, Your Honor, we believe we can get there in a fraction of the time that's been proposed. And when Mr. Gordon lays out all these pictures and graphs and time scales, who do they think they're kidding? Less than a year but a year no matter what. And that's not even with a plan. That's not even with a plan, Your Honor.

And I'm going to go and I'll come back to it at the end, you know, but one of the things -- listen, Judge, I raised my three oldest kids in Montclair, so I can say it. You know, in New York you say I got a bridge to sell you in Brooklyn.

Here, I got a bridge to sell in Bayonne. And that's what we just heard, a bridge to sell in Bayonne.

You know, PIQs. I mean, Your Honor, if Your Honor studied -- and it's apparent Your Honor understands what's going on in North Carolina, and I've got people in this room who could, you know, stand up, put their hand in the air, and tell you what they think of what's going on in North Carolina. PIQs, Mr. Gordon is asking for PIQs from over 40,000 claimants. That's what he wants.

And it's our position if you read our briefs, and I know Your Honor has very carefully, that those PIQs, which go to aggregate claims, isn't necessary in this case. It's a full-pay case. We've got a funding agreement. The issue of feasibility of what's put in the trust really which drives estimation in many asbestos cases doesn't exist in this case. So who are they kidding?

Take a look at what they're asking for. Take a look at what they're intending to do, and you're seeing Bestwall 2. In any event, Your Honor, on the other hand, what do we offer as the purpose of here is where are we going to go with this case? We offer, Your Honor, a road to exit which in sense on the way to that road resolution.

And I've said it before, Judge, and I'll say it again. There's nothing, nothing like competition, competition. They want to put a plan out with our plan, more power to them.

Let them do so. Nothing like competition that brings parties together.

We're almost -- we'll be in this case almost a year when, you know, we come back on the exclusivity point in September. And that's an important point to make, a year.

Further, Your Honor, our alternative, which could incorporate, utilize a cabin-directed short-term Federal Rule of Evidence 706 appointed expert to assist in claims values we believe, and we've said so in our pleadings, is a constructive way to ameliorate much of what Mr. Gordon says about, well, this is a TCC plan with TCC values written by them. We'll get to that in a minute.

But a 706 expert that can in a directed expeditious way focus on claim values and come out of that in a very short time in a way that those claim values can be used in a plan for solicitation and voting, I think, would be a very constructive thing.

In any event, Your Honor, all the while when we're talking about the TCC's view, we're not at all turning our eyes from mediation. It's an important and vital part of this. But from what Your Honor knows and what we believe, we believe that a turn in this direction by allowing some competition in this case would have as experience has shown, and we've cited that experience in our papers, tremendous salutary impact on the progress of this case.

Again, the competition of allowing the TCC to put forward a plan would have salutary impact on the progress of this case to either exit after a contested confirmation hearing -- and God knows, Judge, a bunch of us have been through those before, but we get through them -- or through consensus driven by that competition.

Judge, I also have a PowerPoint. I'm going to ask that it be put up by our --

THE COURT: There it is.

MR. MOLTON: There it is. Hopefully, Judge -- I don't have any graphs or timetables in here, just some points. And hopefully, I'll be able to run through it pretty quickly.

What is the real issue in this case? Again, it's a full-pay case, so I don't think that the number of claims which drives feasibility issues connected to plan is that relevant here. The key is what is a talc claim for. The Court does not need a 502 estimation to answer that question. Even if it were mandatory, which we submit it isn't and we'll refer you, of course, to the Camden decision which was a transcript decision by Judge -- on the record by Judge -- I'm going to get his --

THE COURT: Poslusny.

MR. MOLTON: -- Poslusny.

THE COURT: We know it here.

MR. MOLTON: Yes.

In any event, you know, they always say it's

mandatory. Well, it's not mandatory if there's no delay in the administration of the case and you don't need -- you know, for the purpose of allowance, the fixing of liquidation -- fixing or liquidation of claims would unduly delay the administration. Our view is the administration of this case would not be delayed because those issues would be dealt with by a post-confirmation trust, including the issue of whether a claim is valid or not, is stale or not, should be paid or not.

Again, it's a full-pay case.

The Court and the parties in interest need to know really the individual claim values in a plan that incorporates a TDP matrix used for settlement of talc claims and whether those are in the -- within the range of reasonableness.

What is a fair settlement for an ovarian cancer or a mesothelioma claimant is really the key question that's in front of us all. Aggregate estimation does not and is not necessary to answer this question. We submit, Judge -- next page -- aggregate estimation is a tool that is used to create undue delay. As Your Honor knows, you must have the votes, 75 percent of the affected parties, to confirm a 540(g) plan. Cramdown on tort victims is not an option here, and if a court estimates low, the plan gets voted down. See Garlock.

The plan gets voted down. All that estimation, all that discovery, the plan gets voted down. And in Garlock, as Your Honor knows, the eventual settlement was four times, four

times what the court estimated. If the Court estimates high, by the way, J&J could try to pull the plug on the case. Estimation serves no useful purpose.

And I'm going to repeat Judge Poslusny, Estimation for negotiation to facilitate mediation is not a proper purpose under 502(c) even if the negotiation is aimed at the eventual plan formation. And by the way, as Your Honor knows, LTL is not tied its proposed estimation to really anything else.

The debtor, we submit, Judge, is proposing estimation to create delay which is not consistent with but the antipathy of Section 502 of the Bankruptcy Code, 502(c). Why does J&J/LTL want estimation? Not so hard to understand. Delay. Take a look at everything that's going on in North Carolina. I know Mr. Gordon blames the plaintiffs for everything that's happened in those cases. What a surprise.

Garlock shows that if a defendant actually steps up and agrees to fair values and a fair settlement, the case will settle. That's the history of Garlock. Until that happens, we're just going to have delay. Delay for J&J and LTL is money. JJCI, as Your Honor knows, operates freely outside of bankruptcy, and J&J invests and dividends out funds from New JJCI operating outside of this courthouse and outside of Your Honor's supervision while this case malingers with a debtor that has absolutely no incentive to exit bankruptcy.

J&J wants to forestall a satisfactory settlement to

plaintiffs as long as possible because delay means money to them and their shareholders. Years of delay means cancer victims are stripped, Your Honor, of their rights and perk (phonetic) plaintiffs' objective, real objective, pull away all the platitudes and legal argument, what's really here trying to get them to settle low if they ever want to get paid in their lifetimes.

Next. Next.

This is Garlock, Your Honor. This is my one graph. J&J wants to create years of delay to lever cancer victims. The real tortfeasor and operating companies are not in bankruptcy. LTL is a non-operating company with no business, has no reason whatsoever to exit bankruptcy, get back in the game by reaching a fair and equitable deal with cancer victims.

Take a look at Garlock, 2010, the petition date. 2011, debtor first moves for estimation. 2014, the court adopts debtor's estimation theory and estimates liability at 125 million. Then, the asbestos creditors vote down the debtor's plan based on this estimation. Eventually, eventually in order to get a plan done under 524(g), $500 million settlement, roughly four times the estimation.

By the way, Jones Day as counsel to all Texas Two Steps, have embraced estimation as a path to delay. Now Mr. Gordon admits they have embraced estimation. He just won't admit that it's a path to delay.

Next page, please.

None of the Texas Two Step cases have yet exited bankruptcy, and none, Your Honor, has provided a fair and equitable or consensual settlements. Bestwall, we are five years in, Judge, and we've mentioned before, all the members of the original Bestwall Creditors Committee have passed away. Aldrich Pump, two years pending. DBMP, two years pending. Here, we're nine months going on one year.

For most debtor's counsel, Judge, this Hall of Fame graph would be the mark of failure. And I haven't gotten my client out of bankruptcy. But here, on the Texas Two Step world, this is a triumph as a malingering debtor continues to try and lever an insufficient settlement while its solvent affiliates continue to operate without the burden of bankruptcy.

Next slide.

All Texas Two Step cases have malingered. That's the point. All the Texas Two Steps have used estimation as the tool for delay, Your Honor. We believe this is the point of it. They create LTL to get the benefits and years of delay but keep J&J and JJCI out of bankruptcy so no burdens of bankruptcy. Unlike a real mast tort debtor, LTL has no incentive to exit bankruptcy because there's nothing for it to do outside of bankruptcy.

The Texas Two Step, whether Garlock or even G-I

Holdings, we have delay, we gave delay without the bankruptcy burdens. These are the mismatched incentives which differentiate real mass tort bankruptcies which eventually do resolve and settle on satisfactory grounds with the parties because all the parties there are incented [sic] to reach a settlement.

Estimation by design, as I said, Your Honor, is a road to nowhere. I know Mr. Gordon disputes it, but that's why he's on that side and I'm on that side. But we would submit that that's the only conclusion from looking at the facts. Estimation is not needed to formulate a plan. And I again cite Boy Scouts. And I know that in their papers, they said, well, Boy Scouts is one of those cases where you had a resolution. Well, tell that to Judge Silverstein who's still working hard.

That was a contested confirmation proceeding. Yes, the debtors had deals with certain plaintiff constituents, but the insurer certainly didn't accept the values and guess where those values were litigated, Judge? Those values were litigated not in estimation but in the confirmation proceeding with fulsome and fair and full discovery to the parties.

LTL cannot identify a single 1129 purpose for estimation. It doesn't do it. LTL cannot propose a chapter plan because its real plan is to use estimation to create delay and lever sick and dying plaintiffs.

Estimation has rarely, we submit, if ever resulted in

a settlement. Now I know Mr. Gordon referred to Garlock, but the real story in Garlock was something else, was the plaintiff voted down the plan that used that estimation.

Estimation will not impose discipline or resolve disputes. Indeed, what we saw from Mr. Gordon is a schedule and procedure and massive discovery into asbestos trusts into 40,000 victims that will just create disputes, create delay while our constituency suffers and passes away.

How do we move this case forward, Judge? We must put this on a path to resolution one way or another in six to nine months. Our constituency demands this and deserves this. Of course, Your Honor, we maintain that the case should be dismissed. The appeal will be heard on the 19th. If it's not dismissed, we believe, Your Honor, a competing plan is the best tool.

Either the parties settle or a plan gets confirmed. Giving J&J the benefit of what is in essence a multi-year plan to plan confirmation without even a plan yet filed and where one that the creditors can ever support on its timetable with its discovery means no settlements, means delay, means unbelievable cost, unbelievable taxing on the Court's resource, and a plan that likely gets voted down.

So at the end of the day, Mr. Gordon said, well, if the TCC moves its plan, maybe it won't work. You know, maybe there will be objections and plan objections and, you know --

but we'll know that, Judge, in the next six months. We'll know what those are, and we'll be able to deal with those in the next six months. Here, their proposal doesn't even get a plan in front of Your Honor probably until 2024.

We submit, Judge, the Court should terminate exclusivity to provide the tort claimants and the Court with an alternative. If dismissal is not granted, that will reserve the case with a fair and satisfactory compensation to talc victims in their lifetimes.

And, again, Judge, we've filed our motion to terminate. We're going to have a hearing on it in the next month or so. And we'll be able to argue that here, but we wanted the world and Your Honor to see we're serious. We're serious about moving this case. We're serious about -- you know, we can walk and chew gum at the same time. You know, yes, there's an appeal, but we're serious in the interim about moving this case and we're serious at the same time about mediating why we have a level playing field.

How does our plan work? As I mentioned at the start of my presentation, Judge, we start with the Texas Two Step and the tools that they provided us. The funding agreement must be real and obligate J&J to pay valid talc claims. If not, the Texas Two Step would be a fraud for that reason alone.

We assume for today that LTL and its minions told the truth to this Court about the funding agreement and J&J's

in-court silence we view is acquiescence to those representations. The funding agreement obligates J&J to pay talc claims pre-filing or post-effective date when liquidated through a final settlement or judgment of a court of competent jurisdiction.

Next page.

How does our plan work? Well, what triggers J&J's payment obligations post-effective date final settlements when LTL's proceeding is no longer pending, post-effective date judgment to a court of competent jurisdiction when LTL's proceeding is not longer proceeding?

The TCC's plan is based, Your Honor, on a pay-as-you-go structure. We believe the funding agreement itself -- the architecture that they provided us when they entered into this bankruptcy provides for such and should be used for such.

THE COURT: May I interrupt for a second question?

My reading, when I read through and waded through the funding agreement then, it can be corrected because we know it's not an easy read. The funding and the obligation to pay by the payers, JJCI and J&J, is explicitly dependent upon exhaustion of all other assets by LTL, by the debtor. And we may touch on this later when we do get to the insurance issues, but that would include the insurance policies and their interest in those policies.

We've heard estimates that it could be between one and two billion or more. How do I allow a plan to go forward in a vacuum without estimation without knowing whether the funding, which this plan that you're describing is bottomed on the funding agreement, whether that kicks in? The obligations have to exceed one to two billion. We talk about it as if that's a given, but is it a given? And what record do I have? I mean, is an estimation needed in that regard?

MR. MOLTON: Judge, I would submit first of all that the allowance of us to file a plan will give us the ability to bring the insurers in and talk to them with the debtor and deal with those issues. But second of all, Your Honor, I don't think there's any, any dispute that the liability for talc victims exceeds the extent of available insurance plus the royalties.

I don't think that's a fair question in dispute, and if that were a question in dispute, that is a question, that's a easy question that can be dealt with in confirmation under the process that I just described, Your Honor. So in the event that it's $3.5 billion dollars total, and of course, I'm just using this for example --

THE COURT: Right.

MR. MOLTON: -- that goes well beyond, you know, well beyond the liabilities or the available assets to which LTL can touch upon. And I know Your Honor, in the motion to dismiss

decision, without saying you found anything or held anything or adjudicated anything, talked about numbers far greater than that. I think that's an issue, Judge, that can be folded into the confirmation process. And for anybody to stand there and say, Judge, we need a two-year estimation, or a one-year estimation, in order to ascertain whether the liability of the talc victims exceeds the amount of available assets, which includes insurance and royalties, I think is a straw man.

That would be my response, Judge. I think that's an issue that has to, of course, be dealt with, but it's one that can be done in the context of plan confirmation.

THE COURT: All right. Thank you.

MR. MOLTON: Okay.

J&J is simply required to pay talc claims as they are liquidated post confirmation.

Next slide please.

How does it work? By the way, we believe, meaning the current claimants believe, that future claimants are actually far better off too under our vision since they get the benefit of pay-as-you-go structure. The risk of underfunding is not placed on future cancer victims. The full benefit of the funding agreement is preserved for future claimants.

J&J, in contrast, in the end, Judge, and if you parse through their pleadings, they say the estimation by itself will not do a fixed fund, but we believe it's their intent to use

the estimation to put forward a plan that would fix that liability. And under those circumstances, it would be fixed. They want a fixed fund.

If the trust fund is inadequate, future claimants would have no source of recovery available to them on account of a valid talc claim. Now, we all may disagree as to the developing science, and I know we've heard repeatedly the mantra, well, yeah, the science was introduced in the last four cases under COVID and Zoom trials were lost. As Melanie, Ms. Cyganowski, is going to say, okay, let us go at it now in this, hopefully, post-COVID world. But the developing science, we submit, Judge, which we disagree with Mr. Gordon's recitation of the impact of it, is greater than the present estimate and victims would have no recourse against a solvent J&J under a fixed fund.

Again, next page. How does our plan work?

We would have Court-approved trustees to oversee settlements. As I said, we could bake in the 706 expert now to use to vet and opine on claim settlement matrices. Values can be vetted prior to solicitation. There's no need to ask an expert to guess about aggregate values. Focus on what is reasonable for individual claims, that's what we're interested in.

The claims settlement values would be included in a disclosure statement. It would be our intent, Judge, to

include or to utilize or to focus on and to be assisted by the 706 expert if relevant and applicable. And we can get at it. All parties, J&J, JJCI, and LTL, under discovery rules in the Bankruptcy Rules for a contested proceeding, including plan confirmation, have full fulsome rights to relevant discovery so that their interests will be protected and they will be given due process.

Notice and opportunity will be afforded to all parties in the confirmation, our insurers included, and that will take place by our schedule. It can take place six to nine months, now, not, even assuming the best from Mr. Gordon, one year and then plan confirmation going into 2024.

Next page.

We don't need aggregate estimation. Your Honor raised the question. I hope I answered it. We only need to resolve gating criteria, matrices, values, and scaling factors for individual claims. And, of course, J&J must honor its contractual obligations. Or, alternatively, they must admit that the bankruptcy is predicated on a fraud.

J&J, JJCI's, and LTL's consent is not required to confirm a TCC plan. We would hope, at the end of the day, that they would join us after the plan process or during the plan process while the mediation is going on, but it's not required. Indeed, the funding agreement doesn't require it. Courts can impose a reasonable settlement framework on LTL pursuant to

1123 and 1129. That's gone over in the papers. Those are confirmation issues. I'm not going to go down those holes now. But the Bankruptcy Code plus the funding agreement, we believe, gives us everything we need.

A competing plan and not estimation will resolve this case, Judge. Absent dismissal, there are three realistic outcomes if exclusivity is terminated. First, the Court could confirm our plan, the case ends, and the victims are paid. Second, pressure of a competing plan and the loss of availability to use estimation to create undue delay could produce a settlement and the case ends and the victims are paid. And I would point to PG&E. And I know that Mr. Gordon has raised PG&E's papers. We have, too. He talks about the court ordered estimation there, and that estimation including the Tubbs Fire court tort (indiscernible), by the way. But it also included the end of exclusivity in a competing plan with bondholders. And just look at the pleadings and look at the timeline and you'll see what incented the debtor.

Third, J&J could try to walk away from or nullify the funding agreement and defeat the TCC's plan. If possible, the case would end. Needless to say, there would be litigation and arguments that this whole thing was a fraud.

How much is required? We're ready to go, Judge. We're ready to go. A plan, disclosure statement, trust distribution procedures, trust agreement, motion to approve

solicitation procedures, solicitation procedures themselves, notices, ballots, form of relief, and document agreement, we've all drafted. We need some cleanup work, of course, and we're going to be guided by whatever Your Honor does today, but we can be ready to file all material documents within the next 30 days.

And what I'm saying, Judge, is usually in some of these cases, you get plan supplements like, you know, months after the plan is filed. We're going to eliminate that. We're going to file all of these documents at the same time.

The plan should enjoy, we would predict, broad support from all parties-in-interest, presumably, at the present time, with the exception of LTL and J&J. The plan further provides that a separate estimation is not necessary and would violate 502 of the Bankruptcy Code.

I want to just respond -- I'm on my last slide, but before I get there, I just want to respond to a few things that Mr. Gordon said. He said, first and foremost, the whole basis of their pleading in terms of viewing our proposed case avenue is that the plan process is premature in the absence of agreement or estimation of liability. We reject that. And what I've given you is the path why that should be rejected.

What I find amusing and actually remarkable is the statement that they need all this discovery, you know, in order to mediate with us because that's all their estimation is.

It's tied to mediation. Judge, four months ago, they stood here and said, we don't need any discovery to mediate. Indeed, when we were looking to get the settlement data, which will be very useful because they rely on average case values that they say the settlement data supports in order to sustain their mediation positions. We think once you pull the onion skin off, you're going to find that those claim values are manipulated in a way based on who these settlements are, what they are, and what they contain.

In any event, and I find it just remarkable and outstanding that they're here asking Your Honor, saying the only way to get this case done is to do PIQs on over 40,000 sick people. And Mr. Gordon makes it look like, oh, it's nothing. It's like a typical proof of claim in a bankruptcy. Who are you? What's your disease? What's your claim? Judge, again, do I have a bridge in Bayonne to sell?

In any event, it ain't that way. And trust discovery on all the asbestos trusts. There's no limitation of discovery in what we're doing and what we're asking for. Judge, to say that this multi-layered, you know, one year at a minimum estimation process would be cheaper than getting a plan done in which these issues of claim value can be folded into plan confirmation is really disingenuous. The confirmation process will be expensive, of course. But that confirmation process is going to happen anyways. It's going to have to happen anyways.

Let's do it now and avoid the expense and discovery and discovery disputes and acrimony that comes from, yes, I'm going to say it, the Jones Day play book on estimation.

And at the end of the day, what does estimation buy us? It buys us Garlock. Again, the plaintiffs hold the veto and all they can say, if they say no, there you go. It's a year of frolic and delay while our clients get sick and pass away.

I know Mr. Gordon and no doubt his clients are afraid of overpayment of claims. Nobody is asking that claims be overpaid. Indeed, that's what the confirmation discovery and issue is about. See Camden. You want to contest values? You've got Your Honor. You've got discovery. Let's go at it. See Boy Scouts. Same thing.

I thought at the end, Judge, that I'll get to your question, you know, when you got to some real key, pure bankruptcy issues on plan confirmation. You know, fair and equitable, all that stuff. And you asked the question, what is the harm visited on the debtor's equity holders?

And I think we saw finally the real Texas Two Step, which is a dance, and because he couldn't answer the question. He couldn't answer the question. There's no impairment of equity here. There's no cram down on equity here. In any event, again, going back to the issue, they don't like the claims values. They think it's overpayment. Let's have at it

in front of Your Honor, in confirmation, with a 706 expert baked in, and full and fulsome discovery.

Returning to the question poised in the first slide, Judge, what is the issue in this case? The issue is claims value. Can the (indiscernible) and incenting, and from Your Honor's perspective, incenting taking a turn in the fork that will really not separate parties and cause further delay and lever only one group but will create competition and lever everybody. Can the Chapter 11 plan process, absent dismissal, be used to provide a meaningful opportunity for justice and produce comprehensive, equitable, and timely recoveries for injured parties? I believe the answer is yes.

Is its objective to terminate exclusivity and let the representatives of cancer victims propose a plan and put this case on a fast track to final resolution? Is this something that should be done? I submit it's yes.

If this is not the objective, Judge, a lengthy estimation proceeding that has no legitimate bankruptcy tie or purpose only then to be followed by a J&J plan will unequivocally deny justice to thousands of victims who will die without receiving any compensation for their injuries while they're alive.

Judge, second to last point, we cannot extend, underscore cannot extend, the lives of our constituency, the cancer victims. Accordingly, if justice is to be done in this

case, as Your Honor has proffered in your motion to dismiss opinion, the Court should not extend this bankruptcy proceeding beyond what it needs by accepting the estimation play book.

Instead, Judge, the Court should focus on getting a plan moving, terminate exclusivity, enabling the TCC plan to be considered on with any plan they want to offer, get it in front of you, solicit it, voted on it, and to the extent the plaintiff support it, confirm it.

That's my presentation, Judge. I hope I've answered questions.

THE COURT: Yeah.

MR. MOLTON: I appreciate the time you've given me.

THE COURT: Thank you Mr. Molton.

MR. SATTERLEY: Your Honor, may I approach?

THE COURT: Yes. Is that the order you all, or I don't know if you had discussed it in advance.

MR. SATTERLEY: We haven't discussed the order.

UNIDENTIFIED SPEAKER: (Indiscernible)

MR. SATTERLEY: I'm talking estimation.

I have just a few comments to make.

THE COURT: Well, proceed.

MR. SATTERLEY: Thank you, Your Honor.

Once again, Joe Satterley, Kazan McClain Satterley and Greenwood. I rise to object to the estimation and to address a few points that Mr. Gordon has raised to set the

record straight.

He said that debtor has a strong desire to settle. As I've advised Your Honor in the past, I've tried cases to verdict against J&J for baby powder in 2018, 2019, 2020, and 2021, multiple. And before any of those trials, they never attempted to negotiate.

Still, here in 2022, I've reached out to the debtor and to J&J, through their counsel, begging them on behalf of Mr. Hernandez Valadez, Ms. Johnson, and others, Mr. Hill, please let's negotiate. Let's settle. No desire to settle.

Instead, what I'm told is that I'm talking my plaintiffs into believing their cancer is caused by baby powder. I'm told that they will not offer anything to my clients. So my experience over the last five years has been the exact opposite of what Mr. Gordon tells the Court they're willing to do.

Now, given that I've tried six cases to verdict and other cases that mis-tried because of deaths, I object to this estimation plan because it's a waste of time with regards to this medical science. What debtor's counsel didn't advise you is that courts, not just Judge Wilson, but courts throughout the country have had Daubert hearings every single year. Kentucky, where I'm born and raised, we have Daubert hearings involving J&J. Evidence was allowed in, we went to verdict.

New Jersey, Middlesex County, we had Daubert

hearings. It went to verdict. Multiple trials went to verdict. Los Angeles, Oakland, three separate Judges in Oakland have had Daubert hearings, had hearings, allowed the evidence. The science was sufficient for a jury to decide. Miami, Florida, the State of Washington, Oklahoma City, Indiana, South Carolina, Daubert hearings. The evidence was allowed in. There was sufficient evidence.

To answer Your Honor's question that you posed to Mr. Gordon about this new science, Your Honor is 100 percent correct. The new science can come into evidence if Your Honor later this afternoon decides to release some trials. And Mr. Gordon said there was four defense verdicts. He didn't tell you that there was -- that 2021, I got the last bonded judgment in the Prudencio case.

So this new evidence was out there in the Van Klive case, which was both an ovarian cancer and a mesothelioma case. The science was out there. The plaintiffs won that case. The Johnson case -- all in 2021. So I would tell Your Honor, with regards to a need for a science day, I believe there's no need for that whatsoever.

Procedurally, he's proposing one day, a one-day science, first for ovarian cancer, then with mesothelioma. That just would never, never, ever, ever work. There is epidemiologists that support causation, there's pathologists that support causation, cell biologists that support causation,

pulmonologists, genetics, oncologists, toxicologists. There's literally hundreds of scientific articles and he's proposing that occur in one day. That's just -- it's not necessary and it's just not feasible.

With regards to a couple other points, Your Honor, the personal injury questionnaires. First of all, all my clients have been deposed, were deposed. They answered interrogatories. They voluntarily turned over information in discovery. J&J already has that. There's no need to submit personal injury questionnaires to any of the mesothelioma victims that I'm aware of.

There's been sufficient and adequate discovery done in all the mesothelioma cases that I'm aware of, that there's no need to have any PIQs or anything like that.

Counsel said that it would take decades to resolve these cases. I believe that's sort of a scare tactic because they've already resolved thousands of cases while in the tort system. And they've gathered, already gathered through the discovery process, sufficient information for them to evaluate the merits of the cases.

The last point I would like to say is, counsel says they don't have the resources to try cases. I would respectfully disagree. I've tried cases against J&J where they've had Skadden Arps, Ms. Brown, or King and Spalding, Kirkland Ellis, Drinker Biddle, Lewis Brisboi, Nelson Mullins,

and many other firms and they all have defended J&J baby powder. And those counsel are still approved counsel through the bankruptcy but they have more than sufficient trial counsel to try as many cases as Your Honor will allow to be released.

I appreciate the few minutes that I've spoken here today. Those are all the comments I have right now. I don't have a PowerPoint, but I will have one this afternoon.

THE COURT: All right. Thank you.

MR. SATTERLEY: Thank you, Your Honor.

THE COURT: Mr. Falanga?

MR. FALANGA: On behalf of the FCR, Your Honor?

THE COURT: Yes, please.

MR. FALANGA: Good morning, Your Honor. Steven Falanga, Walsh Pizzi O'Reilly Falanga, along with my colleagues on behalf of Randi Ellis, the FCR.

The FCR is not taking the role of Solomon here, Your Honor, but you've read the position statement.

THE COURT: She can have it.

MR. FALANGA: I know.

You know, Chapter 11, as Your Honor knows, is in the first instance, a compromise process. There's sections in the Code that allow for the Court to compel action when the parties don't consent. But in this particular case, we're seeking compromise. That's been the goal of the Court since the motions to dismiss were denied earlier this year.

As the FCR has noted, at the present time, she sees a global resolution with a fully funded trust as the optimal result for future claimants and she takes that role very seriously. She supports an estimation process. She thinks at some point in time, estimation will likely be needed as part of any possible plan that may come before the Court. But at the same time, the FCR supports allowing exclusivity to be terminated or at a minimum for the Court to consider allowing exclusivity to be terminated in September at the hearing.

The TCC plan could be filed. It could be made public. It could be exchanged in mediation. The same with the debtor. The debtor could propose a plan that doesn't have to be filed just yet. Your Honor, obviously can control the docket in that regard and decide whether a filed plan goes out to solicitation or not and when. The goal here being that mediation is the ultimate resolution that -- excuse me, resolution in mediation is the ultimate goal that the FCR is looking to go with right now. And I think ultimately what the FCR would like is to get back into mediation.

You know, the FCR was appointed a little bit later in the case and was able to participate in the in-person mediations but did not have her expert at that time and really was not able to fully participate. And so, you know, having some mandatory mediation as part of any process sooner, rather than later, not waiting perhaps as the debtor proposes until

sometime in December before full mediation is resumed is not something I think the FCR would like to see. And so we think that that should be the goal ultimately is to see if consensual resolution can be achieved.

Essentially, Your Honor, aggregate liability is important, but claims value is also important. You've heard, I think both sides talk about that. But I think the FCR also feels like understanding the claims values and what the parties are proposing will be helpful to the FCR in making her determination as to how best to proceed in the case. So unless Your Honor has any questions, we just wanted to be heard, and we stand on the statement that we previously filed. We're hoping that we can get back to mediation as part of any process the Court orders.

THE COURT: Thank you, Mr. Falanga. I appreciate it.

Ms. Jones.

MS. JONES: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Yeah, close enough.

MS. JONES: Close enough.

Your Honor, Laura Davis Jones, Pachulski Stang Ziehl and Jones on behalf of Arnold & Itkin.

Your Honor, we have filed a statement with the Court and refer the Court to that and I'm not going to repeat it.

Your Honor, we do not need, nor is it appropriate, to

have estimation to determine an aggregate number here. Experience and case law teaches us that futures are difficult to predict with accuracy. Instead, Your Honor, if we're going to estimate anything, the process should be to establish a matrix, to put a value on a disease and the degree of that disease and we'll set a standard to meet the value and have a plan that would be a pay-as-you-go.

So the suggestion that somehow during this estimation, an aggregate estimation would not be a cap, Judge, is just incorrect. If you do aggregate estimation, you're going to have a number that a plan is going to be funded against. And so you have that fixed amount and claims come in, a trustee is going to have to start withholding. It's not going to be able to make distributions, it's going to have to see where it's going to go.

Your Honor, frankly, that is just so contrary to what the debtor has told us all along, that they are committed to funding here, that there's no issue with funding in full, that they had no concerns about it, and in fact, they made that commitment to the Court. So very troubling for me to sit here today now and hear when we had days of trial on this. And now hear, well, maybe it's not enough. We need to estimate. Very, very concerning.

Your Honor, the debtors propose that they have to have discovery. They say they have to do discovery. They have

to send out questionnaires to find out if the claimant's qualify. Your Honor, it doesn't have to be done twice. We should be deciding values of these diseases and the standards that need to be met, get a plan approved and confirmed, and then, because it is a pay-as-you-go plan, we can determine whether a claimant qualifies at the time that they seek a distribution from the plan. It doesn't have to be done twice. Because to determine if someone can be paid from the plan, we're going to need to know if they're a real claimant and if they qualify under the standards that we will have established.

Your Honor, the claims here are serious, and I know the Court knows that. People are dying. And if we are going to have estimation, it should be limited to an estimation of the value of claims categorized by disease, the stage of disease, and other appropriate distinguishing factors within such claim categories.

The case needs to move along. This should not drag because of non-essential estimation trials that are promoted by the debtor, which previously cases, as everyone talked about today, only caused delay. The debtors do not need the questionnaire discovery for the reasons I just talked about. Everyone is well steeped in this area and in these issues. Once a plan is confirmed, information can be obtained as to the veracity of the claims, the degree of illness, et cetera, as these claims are being presented to be paid.

Your Honor, if we come back to planet earth and we live in the real world for a moment, claimants are going to vote against a plan if it doesn't reflect values and standards for those values that claimants agree with. This is where this time should be spent. We can spend time estimating how many victims will die while we stand around debating unnecessary estimation. Or we can move forward to agree upon values and matrices and get a plan confirmed.

Your Honor, I ask that we move forward in that way. Thank you, Your Honor.

THE COURT: Thank you, Ms. Jones.

Mr. Pfister, I know you want to be heard, but let me let those in the courtroom first and then I'll come to you.

MR. PFISTER: Thank you, Your Honor.

THE COURT: All right. Counsel.

MS. JOHNSON: Thank you, Your Honor. Ericka Johnson from Womble Bond Dickinson on behalf of the Ad Hoc Committee of States Attorneys Generals.

Your Honor, we didn't file position papers on estimation, not because we're not vested in the outcome, but because the parties had all amply briefed the available options and Your Honor had indicated that parties could rise in the courtroom and state positions.

The states also want the cases to progress and agree that the status quo isn't currently working and that there

needs to be some assistance in breaking the log jam. The states believe that there is a path forward that doesn't put the cases on hold indefinitely for years to come. To date, the states haven't participated in any in-person mediation but they still believe in the mediation process. But mediation needs to have some teeth. And so the states would request that in-person mediation be required by all the case constituents but only after having exchanged position papers or term sheets or something that sets bookends against which the parties are negotiating.

And the other part of that teeth is termination of exclusivity. You have to start the clock ticking in order to find some motivation to negotiate in good faith. Estimation only delays the process because it has no bearing on moving the case forward unless the tort claimants agree with the ultimate outcome. It won't establish aggregate liability for plan purposes if there is no consensus from the tort victims.

Now, it doesn't appear that the states' claims are included in the estimation process. It doesn't look like it was built into the schedule in terms of experts or any sort of estimation with respect to those claims. But the schedule is premised on having established knowledge base. So it proposes a very quick process based on no science. That's not the case with respect to the states' claims so the states would be, you know, just starting kind of at a disadvantage if it's proposed

to move forward and they're included in that process within 30 days.

With respect to the states, there have been no trials that have gone forward to date. However, there are two cases that, you know, are on the cusp of trial and those two cases are Mississippi and New Mexico. Currently, they're scheduled to go forward in early 2023 and they could serve as test cases for liability with respect to consumer protection claims. Now, there has been a motion to extend the injunction with respect to those trials and that's not before Your Honor today. That's not scheduled until August. But because of the overlapping nature of some of these issues, I did want to raise that as a consideration in terms of a path forward with establishing liability.

And also concerning the path forward, I think it's important to recognize that this isn't the typical debtor with no other options, you know, but to seek out bankruptcy protection in order to preserve jobs and preserve an ongoing business. LTL chose the bankruptcy path and the Bankruptcy Code provides for limited exclusivity unless extended, you know, by the Court for cause. As a non-operating entity, LTL has no motivation to determine its liabilities quickly. Mandating mediation with terms provided by all sides and terminating exclusivity on a date certain will move the administration of these cases forward and provide a path

towards confirmation, either consensual or contested.

Thank you, Your Honor.

THE COURT: Thank you, counsel.

MR. THOMPSON: Good afternoon, Your Honor. Clay Thompson with Maune Raichle. So I'm also presenting on the PI this afternoon so I'll try to be brief and focus on estimation right now.

So the central issue in this case from our perspective is that this whole thing is unconstitutional. All the cases in North Carolina and this case here is unconstitutional. So the central issue is not aggregate liability.

And I think you've heard from everybody here today from our side that none of the victims want estimation. They're all telling you they don't want it. And Mr. Gordon mentions the scorched earth litigation in bankruptcy court in North Carolina. Well, why is that?

Well, because it's unconstitutional. That's our position. And I would point out that my firm is a large firm. We only handle mesothelioma cases. We are retained by a few hundred clients a year that have mesothelioma. We only have 61 J&J cases. If we sued J&J, it was because we believed it was a substantial factor in causing our client's disease. But to address the broader issues here, we have clients in Miramont. We have clients in Paddock. Those cases resolved.

The difference between Paddock and the difference between Miramont and the difference between Jones Day's model is there was no Two Step. There was a limited fund. And so when it's in our client's best interest in a limited fund case like Paddock, where there's a company that we could see was in distress and there's no preliminary injunction so we don't have our hands behind our back, we do what's best for our clients, which is to make a resolution.

And so I think here we've consistently heard the victims don't want estimation. And I think the reason that I would put forward specifically is when I go to make recommendations to a client to settle his or her case, I don't go to them and say, well, and I did this, I settled J&J cases.

I went to clients and made recommendations to them to settle their cases. And the recommendation was not based on, well, you know, I believe that J&J's total liability could be as high as $60 billion so you should take X. It was, this is what's being offered. These are the risks. You've got a trial. This is what could go badly. These are the other defendants in your case that you've already settled with. That's how you do that. So I don't care what the total aggregate liability is and I don't think that any of the victims do. What the victims want is to be heard.

If this is an unlimited fund case, my position is this is a non-limited fund case. I think it's pretty clear.

Then, why do we need to estimate? Is the liability greater than $60 billion? That's what the funding agreement says, up to $60 billion. Is it greater than $60 billion? Then, why are we going to estimate?

They say that, and in their reply on estimation, we don't need to estimate for distribution purposes, and that's right. My clients will liquidate their individual claims before a jury in the U.S. District Court before they will be bound up by an aggregate resolution through a mediation that I'm not invited to. I keep hearing about mediation. It's progressing. It's not progressing. I don't know that I'm not in mediation. None of my clients are involved in the mediation. And so I'm just waiting to hear now what the aggregate number is. How do I go to a client and recommend, you know what you ought to do? You ought vote so a useless sheet of paper can reorganize and the total amount in the trust will be 6 billion, whatever the number is. That's not how I make recommendations to my clients.

And then, they say in their briefing, well, you know, Maune Raichle can't prospectively reject offers. Exactly. My clients decide to settle the cases and so zero. Zero is the amount of money that has been offered to my individual clients in 10 years of Two Step bankruptcies. Zero. Because that's the model. The model is we want to deal in aggregate so we're only going to negotiate in mediations for an aggregate

resolution in confidential settings.

So when Mr. Satterley tried to reach out to them for Mr. Hernandez Valadez, Mr. Prieto stood up and said we couldn't do it because of the order that we begged you to enter. The stay prohibits us from negotiating. That's all by design. So zero clients of mine have had Georgia Pacific or Train or Ingersoll Rand or Certain Teed or J&J come to them and say here's an offer that I can then take to them.

And, you know, the history of this litigation is that when J&J was offering, clients were settling, including ours. And so the central issue -- it's really telling that Mr. Gordon would say the central issue is aggregate liability. Yet to them, it is. I don't care about aggregate liability. All of the claimants are universally opposed to estimation. And what's going on in North Carolina is just a demonstration that we're not making a deal as far as Maune Raichle is concerned. It's unconstitutional, can't be fixed, and we're going to see those sanction orders. We're going to see how the appellate courts view those and whether the Court had jurisdiction to do that.

Last thing. He brought up the Olson verdicts. I want to make it very clear. There's risk. There's risk in the jury system and that hurts for Mr. Olson. But he objects to this bankruptcy. My firm spoke to him, Mr. Block, Ms. Ratcliffe, were in this courtroom who tried that case. You

know what he wants. He wants accountability from J&J. He objects to this bankruptcy, even now. Even now.

So I'll say this hopefully for the last time that this needs to be said. My clients hired Maune Raichle to speak for them. They don't need to be spoken for from Jones Day or Robinson Bradshaw or Orrick or anybody else. Maune Raichle speaks for my clients and Levy Konigsberg for the cases that we have together. They object to this process. All the claimants object to estimation.

And so I'm not -- my position is that you really can't get there from here to a resolution so there's no constitutional global resolution that can exist. But I'd like to see the plan that TCC is proposing. I don't know if I'm going to like it or not, but I'd like to see it. And if the objective is to try to get this case resolved, and I think we disagree on how that can happen, but I will say that it would be more instructive from my clients' perspectives to see what the plans are then to do what we've been doing for 10 court -- well, nine court years in North Carolina. Because clearly, that's not working.

And I -- last thing I'll end with. In April, after the trial, Mr. Gordon goes down to the ABI seminar and calls the Two Step, the divisive merger, the greatest innovation in the history of bankruptcy. Now see, that's a really interesting way to put it because it hasn't worked. So they

tell you, well, we're here for the claimants. We're saving them from these terrible plaintiff's lawyers. Plaintiff's bar, lottery, lottery, lottery. But then, when they're out of bankruptcy court, it's the greatest innovation in the history of bankruptcy. How can that be?

They've paid zero people. It's never worked. Because that's the point. It's the greatest innovation from the history of bankruptcy from J&J's perspective, from Georgia Pacific's perspective, from Jones Day's perspective. Jones Day Bates Whites have been paid $100 million in these cases. Zero to claimants.

Thank you.

THE COURT: You're welcome.

Good afternoon.

MS. RICHENDERFER: Good afternoon, Your Honor. Linda Richenderfer from the Office of the United States Trustee.

Your Honor, I'm not rising to take a position. The U.S. Trustee takes no position on estimation versus plan versus mediation. We do believe that this case should be run by the parties and the parties experts.

Your Honor, the only reason I rise is that baked into the proposals by the debtor, by the TCC, by the FCR, were these concepts of 706 experts and I think it was some sort of an analyst. I can't remember the exact term of art. And if Your Honor is going to make a ruling that includes that concept, the

U.S. Trustee would like to speak to that concept because we do have a lot of concerns about transparency and neutrality.

Having been involved in several of these cases myself, I do question how a neutral 706 expert witness can be found on some of these topics knowing how many asbestos cases there are out there and how many experts are already engaged by debtors versus how many are engaged by TCCs versus how many are engaged by FCRs and the tendencies of those groups to keep within those confines. And so that would be why, if Your Honor is thinking of the 706 route for any of these proposals, I just rise to make clear that, you know, on 706, the Court on its own motion or on the motion of a party-in-interest can consider that and can appoint an expert that the parties agree on or any of Your Honor's own choosing.

But there are various things that the then expert must do for the transparency. They must advise the parties of all their findings. They must be available for deposition. They may be called to testify and they may be cross-examined. What I heard from the debtor, what the debtor was describing, was more of the role of what I see as a magistrate or a special master that the experts would sit in front of the neutral or the 706 expert and present their cases and then the 706 expert will then do a report for Your Honor. That's not what Rule 706 provides for.

And the concept of having a technical analyst, I

think is the term of art I see in the cases. Again, I read the case law and there is a real concern out there amongst the courts regarding the transparency of that process. And the cases that I saw that went into the transparency and neutrality issues all site to one of the dissenting opinions in the Association of Mexican American Educators case, which is at 231 F.3d 572, and it's from George -- I mean, I'm sorry, Judge Tashima, I think is his name. He's the last dissenting opinion.

And he sets forth in very great detail a process that he believes should be undertaken and the limitations on any sort of analyst that the court may engage and how everyone needs to know who the analyst is, have the opportunity to object. There needs to be disclosures made so even the U.S. Trustee can rise if they think it's necessary that there is an issue of disinterestedness that needs to be addressed.

So, Your Honor, we just wanted to put something on the record. We didn't know how far your rulings today may go.

THE COURT: Who knows?

MS. RICHENDERFER: But we wanted to make sure you were aware of our great concern regarding appointment of experts, analysts, and what role Your Honor may ask them to play in the cases.

THE COURT: Fair enough. Thank you.

MS. RICHENDERFER: Thank you, Your Honor.

THE COURT: Anyone else in the courtroom?

(No audible response)

THE COURT: Mr. Pfister, it's your spotlight, so to speak.

MR. PFISTER: Thank you, Your Honor. Can you hear me?

THE COURT: Yes.

MR. PFISTER: Excellent. Good afternoon, Your Honor. For the record, Rob Pfister from the Klee Tuchin law firm on behalf of AWKO. I apologize for not being present in the courtroom today. I've not missed a hearing yet. But unfortunately, I came down with COVID and therefore cannot travel.

THE COURT: We appreciate the distance.

(Laughter)

MR. PFISTER: Well, thank you for hearing me by Zoom. I do appreciate it.

So, Your Honor, there are two fascinating aspects I think of this bankruptcy case. Perhaps more than two, but two that I will cover. One is, you know, how does the Texas Two Step structure interact with traditional bankruptcy concepts like the absolute priority rule and other traditional bankruptcy rules and procedures? I was kind of floored actually to hear Mr. Gordon today say that it was, I wrote down "beyond belief," "unimaginable," that the claimants could vote

for a plan and that the funding agreement would kick in and fund that plan, that that couldn't possibly work.

And the reason I was a bit floored is A, this is the system that -- this is the construct of the structure that Jones Day designed and that the debtor is using and I'm certain Your Honor recalls Mr. Gordon standing before you in February when we were there at the trial on the motion to dismiss saying that, you know, J&J's consent was not necessary for a plan. So far as I can tell, his comments about how it's unbelievable or beyond belief that, you know, claimants could vote for a plan and it would be funded by the funding agreement, they're kind of predicated on two points.

One is this notion that claimants would be overpaid, which no one is proposing, certainly. And then, second, this kind of vague notion that there's an absolute priority rule issue with equity holders and Your Honor's comment, or questions, touched on that. Certainly -- I mean, I haven't seen a TCC plan, but I would imagine you could simply reinstate equity. There would be no impairment.

If this is the structure that J&J designed with a synthetic bankruptcy estate, you know, I think they should have to live by the structure they designed. No one's going to be overpaid and under a full-pay plan, there could be no impairment of equity.

Then, the second fascinating aspect I think of this

bankruptcy case, and I'll tie this to the estimation, I'll tie both points to the estimation in a moment, is that unlike other asbestos bankruptcy cases, I think from the very get go, from the Manville case forward, as well as other mass tort cases, the sex abuse cases, the opioid cases, other cases of this nature, this case is unique in the fact that the debtor admits no liability. They've stood up from day one and have said, you know, our products don't cause any disease or impairment and, you know, we owe nothing.

I don't think other mass tort defendants have taken that position in their bankruptcy cases. I thought the TCC's comments in its reply brief on the difficulty of negotiating with somebody when that's the construct were very well taken because, you know, if the debtor's position is that the right number here is zero and everything is simply a nuisance settlement or a settlement to avoid defense costs, it doesn't really leave much room for having these matters consensually resolved. I think that's an important backdrop point.

So tying those two points together and how it relates to estimation, number one, I think it's important that we not litigate these important issues about, you know, what should a plan look like, how could a plan work, what limitations might there be as a result of the absolute priority rule or otherwise. I don't think we should litigate these on the fly. I think the proper way to resolve these questions is to allow

the TCC to propose a plan and to, you know, I'm sure LTL will raise any objections it deems appropriate in the context of, for example, motion to approve a disclosure statement.

They'll say, no, no, the plan's unconfirmed because, you know, equity will be impaired or whatever Mr. Gordon's argument might be. I think he said he hadn't thought through the issues and, you know, off the top of his head, he could come up with a few. Well, we shouldn't be litigating off the top of his head. We should be litigating in the context of plan proposals.

And then, the second point is let's stick with the traditional bankruptcy path. You know, after bankruptcy petition is filed, after some initial motion practice with respect to motions to dismiss, which of course we had a trial on stay relief and the like, you know, then the parties move to the plan process. That's kind of how it's done. That's how disputes are typically done.

To the extent there's a need for estimation, Ms. Jones talked about what her view of estimation and how that could work. The debtor has a theory of estimation that you have to estimate the aggregate. I don't think you have to estimate aggregate liabilities, but estimation is a tool it's not an end unto itself and I think, you know, if you peel back what the debtor is saying here, and again, take it from the backdrop of the debtor's position is is that it owes zero and

anything above zero is overpaying.

I think if you peel it back, what the debtor is really saying is, is we want you, Judge, to agree that we owe nothing and so we would like to do a year-long estimation process so we can convince you of the science and get you to say we owe nothing. And they're viewing it as really as a mediation tool. And, you know, echoing Mr. Molton's comments, I don't think that's an appropriate use of estimation and I don't think it's a path to anywhere in this case.

Anyway, thank you, Your Honor. I appreciate the opportunity to participate by Zoom.

THE COURT: Thank you, Mr. Pfister. And I hope you get better --

MR. PFISTER: Thank you.

THE COURT: -- and look forward to seeing you on this coast.

Anyone else wish to be heard? Don't feel compelled.

(Laughter)

THE COURT: All right. Mr. Gordon, did you want to respond?

MR. GORDON: I do, Your Honor. I can be relatively brief I think.

Just starting with a point that Mr. Pfister made and others, there seems to be a number of efforts to try to paint us as changing positions. And I don't think, Your Honor, that

we've changed positions on anything. Mr. Pfister suggests that today, we're now arguing that J&J's consent is required for plan confirmation. I did not make that argument.

The point I was making is that we're in a judicial proceeding. We believe, like the claimants, that we have rights to be heard, that we have due process rights to make our case and it was unimaginable to me that we could have a situation where a plan gets approved based on the claimants agreeing to their own demands or we don't have a full right to be heard in terms of what the results of that settlement with themselves are and without a right to fully defend ourselves. So there's no change in position.

Also Mr. Pfister said that in his view, this case is unique because this company has been telling this Court from the beginning that it owes nothing. And we do believe we owe nothing. If the merits are properly examined with all the facts, we do believe that's the case. I can tell Your Honor that many companies have gone into asbestos cases making the exact same argument. It was made in Garlock. It was made in Bondex. That was the view in Kaiser Gypsum. There, the arguments were different. It was based on the fact that the products at issue had chrysotile asbestos not anthophyl, that the exposures would not -- that that's a less toxic asbestos, that the exposures were not sufficient to cause disease and no liability. So I just want to say there's nothing unique.

But there's a suggestion embedded in what he said which is a suggestion that we're not even proceeding in good faith in this case, that we're not negotiating in good faith, and I assure Your Honor that the debtor and J&J have taken the mediation very seriously. Significant offers have been made and to imply that maybe there's an unwillingness to make any kind of material offer to resolve this case and move on and be done with it, that's completely incorrect.

As to the U.S. Trustee's comments about the Rule 706 expert, all I would say there is we gave a lot of thought to those issues as well, did research. Knowing Your Honor, I know you did too. And I would say a couple things, and I was remiss probably in not saying something before. The reason we propose two experts is because we can't envision anyone, any single person, who would have the requisite expertise to address both science issues, medical science issues, and economic issues.

We can envision that there are people who have the expertise to advise on all the medical science issues and then on all the economic issues. So I did want to be clear. I don't think I said it before. That's the reason we thought that two were necessary. We just racked our brains and we just couldn't think of a single individual or type of individual who would provide the expertise across the spectrum of issues who would have to be considered.

But with respect to the U.S. Trustee's point

specifically, she's right that we found as well there's sort of a pure 706 expert, which is more like an expert witness who writes reports can be cross-examined. And then the other concept we found was a technical advisor serving more in the role of a technical advisor. And that seemed to us what Your Honor was thinking about here. We don't know exactly what Your Honor was thinking about, but at least I think when we were laying out our proposal, that's the way we were thinking about, somebody who could provide technical, scientific, or economic advice to the Court on issues that, you know, are pretty, you know, are pretty complex and not easy to understand for, you know, someone who's not immersed in those issues day-to-day.

So we think there is plenty of authority for that. And that would be someone that wouldn't be an expert report, per se, or there wouldn't be cross-examination, per se. But admittedly, we've seen two different approaches adopted by courts and we don't see either of them falling in the category of a special master. That's not what we were seeing here. A special master to us is where the court's basically delegating responsibility to make a decision or recommend a decision. We didn't see it that way. We saw it more in terms of providing needed advice to the Court and assessing the issues that would be presented by the experts in the case.

Mr. Thompson, the one thing -- I mean, obviously, he's made very clear and his firm has made very clear, they are

opposed to the bankruptcy period. They're opposed to every bankruptcy. They want to litigate every one of their cases and they argue that every single one of their claimants would rather proceed in court than accept a fixed payout under a plan. But at the same time, he has to concede he hasn't seen any plan. He doesn't know what values might be offered. So to me, I don't think we can put much stock in a position like that where a party's telling you that no agreement would be acceptable. We don't care about the aggregate value. Well, of course, they don't care about the aggregate value. They want to know what the claim values are.

But he did attempt, and we've seen this multiple times, to distinguish the Paddock case. And he said that company was in distress. That's different. Well, that company's equity was preserved. He also said that there was no PI in that case. That's a totally different case. Well, there was no PI in that case because there was no litigation in that case. All their claims were handled under administrative settlement. So that's just not a fair way to distinguish Paddock. And of course Paddock, although a Texas divisional merger wasn't utilized, the equivalent type transaction was done in that case and there was a funding agreement and that sort of thing.

Ms. Jones, again, in another effort to paint us as changing our position, said that what she heard today was very

troubling because that was contrary to our assertion that we were intending to fund claims in full. And she was basically suggesting that because we're not, at this point, supportive of a pay-as-you-go plan that that's a change in position. That's no change in position. All the parties know that. We've been very clear from day one in this case that we want a global permanent resolution of this liability. We want to fund the liability and we want to be done with the liability.

And, obviously, what's being proposed by way of cram down is a plan that wouldn't do that. It basically takes off the table immediately what our objective is in this case. So that is not a change in position. The reason we want to focus on the aggregate liability is we want to pay a funding amount that's acceptable to the parties and we want to be done. There's no surprise in that. There's no change in position.

There's also been a lot said by, I think Mr. Satterley made a comment, Mr. Molton made a comment, about the PIQ discovery and the trust discovery. And, again, we hear this in every case. I think Mr. Satterley said we don't need the information. We already have the information.

Well, we don't have the information. I put up the statistics from the other cases to show you that those companies didn't have the information either. And it's always been beyond me why there's so much opposition to discovery that's intended just to seek the basic information that any

court would want to assess the validity of these claims. Why is there such opposition to that? Why don't they want to tell us from whom else they're seeking recoveries? Why don't they want to tell us what other recoveries they've gotten in the same claims?

On the trust discovery, why don't they want us to know that they're seeking recoveries from other trusts with respect to the same claims? That's all we're asking. We want to know. These are claims that there's either several liability or joint and several liability. Aren't we entitled to know whether or not they've actually recovered on those claims already or they're asserting somewhere else that they've been exposed to other companies' products.

This was a gigantic battle in the Garlock case and Judge Hodges ultimately said, I think some discovery is permitted. And I know you've read his opinion. At the end of the day, he said, look, I limited your discovery, but I looked at 15 cases and in every single one of the case, it was clearly established that the plaintiffs suppressed evidence of having submitted trust claims, that they told the company one thing, I've only been exposed to your product or maybe a couple, but at the same time, they were going to other courts going to trust and saying, I've been exposed to 15 other products or 20. And that was enough for him to say, I don't accept any estimation based on settlements because I don't need to see any

more. If it happened in 15 out of 15, that's enough for me.

So that's a long way of saying, Your Honor, that, again, the opposition, I guess, is not surprising based on what we've seen in other cases, but the PIQ, that's very basic discovery about the merits of the claims and trust discovery is very key with respect to alternative exposures. And remember that the trust discovery is pursued against trusts who all have electronic databases. It takes them a push of the button to spit that data out to provide it. There's no burden. The companies typically offer to pay the costs. That should not be a problem.

Mr. Satterley just misspoke on one point I'll comment on. He criticized us for proposing that the medical science hearings would be one day. I mean, our proposal was actually four days for ovarian, three days from mesothelioma, and obviously, that's a proposal we're making. We think, based on what we know and our experience in the tort system, that would be sufficient. But we're not saying that it's four and three and that's it, we're not willing to talk about that.

I thought you asked an interesting question of Mr. Molton about the value of the insurance and what you would do with that at confirmation. And his answer, I thought, which I think was the right answer was, well, you're going to have to do an aggregate liability determination at least to show that the liability exceeds one to two billion or three billion. I

think he said three and a half billion as a hypothetical.

And that's the point. There has to be an aggregate liability. There's no way to shortchange it. And he was very dismissive of it in the sense he says, oh, well, it'll be easy to show it's over three and a half billion. That's no problem at all. Well, based on what? And following what discovery? And based on what process are we going to determine that? Is he just going to come into Court and have someone say, well, it's obviously at least 10 billion? Well, fine, you can do that, but we have a right, I believe, to our discovery and our right to fully challenge any expert who takes that position.

The other thing, Your Honor, is we heard multiple lawyers stand up here and say that this is all about delay. Delay, delay, delay. I think in the slide, Mr. Molton had at least three or four times, maybe in the same sentence. And I would just ask Your Honor who's been sitting through these hearings, who has been getting reports of some kind about the mediation, whether you believe there's any evidence that we have been delaying things. I would submit that the record clearly establishes exactly the opposite. And so it's one thing for Mr. Molton to stand up here and make those assertions. I didn't hear any evidence to back that up and I submit there is no evidence.

These companies want this case to move fast. We're not interested in delay. We wish the mediation was over. We

wish it had succeeded by now. It hasn't happened for reasons that are bothersome to us, but it is what it is. But we're trying to come up with other ways to focus the parties in the right way and to put them in a position to settle this sooner rather than later.

So I guess in the end, Your Honor, I would just say this. All I hear and all I've heard from these counsel, one by one, is that we have a veto right, we can do what we want. We make the demand. We decide. It's irrelevant what the debtor thinks. It's irrelevant what J&J thinks. And, frankly, they're trying to put you, I believe, in a position where it's very difficult for you to determine whether what they decide for themselves works for them is actually fair and appropriate.

We're in a court process to try to fairly resolve this liability. And, you know, we believe that we have rights that we're entitled to to protect our interests in that respect. And I would just ask Your Honor to take those comments for what they are. I've heard them in every single case. We will never agree. We will never accept anything less than what we demand. Anything we say goes. Anything we say will be accepted by the claimants.

Well, my answer to that is we have a court process. This Court is here to find the truth and to do justice and that's what we're asking this Court to do.

THE COURT: Thank you, Mr. Gordon.

MR. GORDON: Thank you.

MR. MOLTON: Judge, just one point and I'm not going --

THE COURT: Sure.

MR. MOLTON: -- to reply to anything. You know, we are also cognizant we're here in a court process and we're looking for justice too. I just need to say something because this isn't the first time it's happened.

We heard Mr. Gordon lecture the plaintiff lawyers hear about adherence to Court orders. We have a mediation order that talks about confidentiality and I've heard just now from Mr. Gordon what I consider to be a breach of that order in terms of talking about whatever offers have been made there and characterizing them.

Put it this way, I'm not going to respond to it. I'm going to adhere to the mediation order which I think we all need to do. And, again, this isn't the first time. But be advised, Your Honor, we dispute every, every characterization that was made in front of Your Honor right now on that issue.

THE COURT: All right. Thank you, Mr. Molton.

To quote my favorite auctioneer, are we done?

I think we are for now. Let's try to return about by 1:30 and we'll get started again.

Thank you.

(Recess at 12:46 p.m./Reconvened at 1:40 p.m.)

THE COURT: All right. Bear with me one second, Ms. Cyganowski.

(Pause)

THE COURT: All right. My apologies.

Ms. Cyganowski.

MS. CYGANOWSKI: No, let me -- and if I may approach before we begin. Can't be the only one without a PowerPoint.

THE COURT: Heavens.

Now, is this in the context of the --

MS. CYGANOWSKI: Of the preliminary junction.

THE COURT: -- preliminary injunction?

MS. CYGANOWSKI: Correct.

THE COURT: Okay.

MS. CYGANOWSKI: That is correct.

All right. Your Honor, for the record, Melanie Cyganowski, Otterbourg, co-counsel to the TCC.

Your Honor, let me begin by saying what I am not going to address and what I am not going to do. I want the record to be abundantly clear that the TCC rests on its previously filed papers opposing the grant to the preliminary injunction. We are not seeking or attempting to re-litigate issues and arguments that have been previously presented and are now on appeal before the Third Circuit with oral argument scheduled for September 19th.

The points raised by the debtor challenging the

Court's jurisdiction to modify the stay at this time miss the mark and raise what we believe are straw-man-like arguments. By its order, the original order, the Court expressly reserved its inherent right to modify a preliminary injunction upon an examination every 120 days or so by visiting the changing circumstances of the case and its progress.

The Court has been clear and the TCC welcomes the Court's invitation to focus on the parties' progress towards mediation and plan formation.

Where are we? What progress has been made in mediation toward plan formation? Obviously, the answer is that there's no settlement yet, or it would have been announced.

As we noted in our papers, while the details of the negotiations must remain confidential, the reasons for the lack of progress I submit are open and notorious. From the outset, the debtor and its parent, J&J, have vehemently, vehemently argued that the estate bears no liability whatsoever to the talc claimants. It's mantra is to shout out that its products are completely safe and that the talc claimants are entitled to nothing from the debtor because their claims are based on junk science and ambulance chasing by the plaintiff's bar. This morning, we heard Mr. Gordon reiterate this belittling the talc claimants' claims, even calling them baseless at one point.

For our part, we strongly disagree and we are equally as vehement that there is a causal nexus between the J&J

products, the debtor's products, and the harm suffered by the talc claimants. We believe that the debtor's products are unsafe, that they knew that they were unsafe, and that the litigations which preceded the bankruptcy together with the Daubert rulings support the plaintiff's view that their cases are jury worthy.

Where does this leave us? How should we proceed? And how should this case proceed? We believe that the best way to drive all parties to common ground and to a consensual resolution is to put the debtor and the talc claimants to a test of their respective convictions. Nothing pushes parties closer to settlement more or better than facing and, in fact, realizing that they are at potential risk.

The playing field must be level. No single party should feel so comfortable that it does not perceive risk. All parties must face uncertainty and they particularly should not be lulled into a year, a year-long discovery, a process that has with it a blanket injunction that protects the parent and more importantly, the non-debtor affiliates from all litigation.

The TCC has put forward a subset of 12 cases, which we believe are trial ready. And if permitted to proceed can be fully tried by year-end with the possible exception of the MDL case, which is mentioned therein. These cases include venues in seven different states plus the federal MDL. The debtor may

complain that they are cherry picked, but the bottom line is that they are all trial ready. And the fact that they are trial ready, met the primary criteria, which is regardless of where they are, they are trial ready whether they are in a plaintiff favorable jurisdiction or not.

Eight of these cases include plaintiffs with ovarian cancer. Four are plaintiffs suffering from mesothelioma. Contrary to Mr. Gordon's statements this morning, trying this subset of cases during the next few months will provide meaningful information and insights to the parties, to the courts, and to any court-based expert should there be one.

Importantly, nothing pushes parties to settlement faster than going to trial before independent jurors. The key here is to drive the parties towards successful mediation. The goal is not to have this Court be faced with hearings in the future after a year of discovery and a year of hearings. The goal at this pivotal moment is for parties to be forced to come to a resolution and the best way we believe is to create uncertainty and to change the playing field as it exists today.

We submit that this is a pivotal point in the progress of the case and the Court should allow multiple parallel pathways to proceed. The preliminary injunction should be modified to permit these 12 cases to proceed to trial. Even if the Court appoints an expert under Rule 706, the expert's investigation can run parallel to and use whatever

information and data points arise from these 12 trials.

The trials can provide a backstop to the expert's investigation as they are expected to be substantially completed by year-end. And as we have noted, and I know it's not for today, exclusivity can and should be lifted to permit a competing plan to be placed before the parties in interest in this case.

The professed fears of over burdening the state courts are avoided by selecting a smaller subset of 12 cases. We do not believe this is a distraction in any way from the proceedings in this case. These cases are trial ready. They were made trial ready by counsel who are not burdened with the bankruptcy aspects of this case. And we don't believe that it'll be a burden on the state courts, not only because it's over many, but because the state courts are now trying to clear their dockets of these cases as well and would like them to move forward.

And most importantly, these trials will be heard by a jury. And the conclusions reached by the jury will be available to the Court appointed expert as I noted and to the Court. These jury verdicts, unlike any expert's opinion, will not be theoretical constructs. They will represent the world view of those who are hearing the cases.

This bankruptcy case was filed nine months ago. During this time, the debtor has not taken any meaningful steps

toward plan formation, even though it has enjoyed this complete respite from all pending litigation in state and federal courts. As Mr. Molton noted this morning, with this blanket injunction in its favor, J&J feels no pressure whatsoever to move this case any faster than the multi-year plan that they've put before the Court this morning.

This nine month saga has however not been so kind to the plaintiffs who, because of their ailments and diseases and because of their stay, have been denied their day in court before a jury. Over 300 plaintiffs have died since the petition was filed on October 14th. Many more have become grievously ill. Judge Warren dealt with a similar situation, albeit slightly different, in the Diocese of Rochester case, and I quote him. "The scales shift over time and the weight of public interest during these later months now tip in favor of the abused survivors who have suffered in silence for so long to be able to seek redress in the state courts from the non-debtor Catholic corporations."

So too here, we believe that the Court should permit at least these 12 cases to proceed to trial. We believe that doing so will allow measures to be taken in smaller steps consistent with the Court's goals. With the Court's permission, I would like to conclude by briefly highlighting key points for each of these trials and plaintiffs if these slides could be put up.

By reviewing the plights of these plaintiffs, I do so, not for the purpose of appealing to the sympathy of the Court, but rather to highlight and focus upon the prejudice suffered by the plaintiffs, which is a significant factor in the Court's analysis.

And we start with Shawn Blaze (phonetic). Shawn's case, which is now being prosecuted by her family, is pending in the state court of Missouri. An athlete, Shawn was a skilled figure skater. She was a coach and business owner. She regularly used Johnson and Johnson's Baby Powder during her skating practices and performances. Shawn was diagnosed with Stage 4 ovarian cancer at the age of 48 and passed two years later. She is survived by her two sons and husband. Her case is trial ready in the state court of Missouri.

The next one, Diane Brower. Diane's case is pending in Fulton County in Georgia. A marketing executive, Diane was diagnosed with Stage 3 ovarian cancer at the age of 62. Diane began using Johnson and Johnson Baby Powder as a teenager and continued for the next 20 years. She left behind three sons and her adopted granddaughter, whom she was then raising at the time of her diagnosis.

Corin Karina (phonetic) is a speech pathologist and a native of Toms River, New Jersey. Corin worked with young children for over 30 years. She was diagnosed with ovarian cancer, Stage 3, at the age of 47, passed away nine years

later. Corin used Johnson and Johnson's Baby Powder every day for 33 years. Her case is pending in Missouri state court and is ready for trial. She left behind a loving husband and two sons.

Gayle Emerson also has a case which is trial ready, which is pending in Philadelphia, Pennsylvania. A dedicated and loving mother and grandmother, Gail was diagnosed with ovarian cancer, Stage 3, at the age of 64. She participated in Relays for Life to raise funds for cancer before she passed. She passed away four years later. Gail also regularly and daily used Johnson and Johnson Baby Powder for 48 years.

Patricia Matthey, her case is pending in Sarasota, Florida. A successful jazz aerobics athlete, Patricia opened her own studio. She was married to Bernard, had two children and two grandchildren. Patricia was a lifelong user of Johnson and Johnson Baby Powder. She was diagnosed with Stage 4 ovarian cancer at the age of 69 and passed three years later.

Bernadine Moore was born and raised in Philadelphia. She was the pillar of her household and active in her church. She always used Johnson and Johnson's Baby Powder, sometimes twice a day, for over 50 years. She was diagnosed with Stage 3 ovarian cancer at 66. Her pathologist discovered talc presence in her tissue samples taken from her ovarian tumor. Bernadine passed away two years later at the age of 68 leaving a large and grieving family.

Tamara Newsome is a resident of Maryland. Tamara was a medical sonographer who immediately recognized, and I cannot imagine the tragedy of looking at the image on the ultrasound screen and her diagnosis, realizing that it was Stage 2 ovarian cancer. Tamara was married for over 23 years and has two children. Tamara is in remission fearing the return of the cancer. Her case is one of the MDL Bellwether cases.

Deborah Schultz is a resident of Los Angeles and her case is pending there. A registered nurse, Deborah worked as a neurological ICU nurse at LAC USC Medical Center. Her husband is a practicing ER physician and together they have two sons and a grandson. A daily user of Johnson and Johnson Baby Powder and Shower to Shower for over 50 years, Deborah was diagnosed with Stage 4 ovarian cancer. Her case falls within the state's preference statute and is trial ready.

Randy Derouen is a member of our Committee. He was diagnosed with mesothelioma at the age of 46. Born in Biloxi, Mississippi, Randy moved to Indiana to accept his dream job as a general manager of Sportsbook at FanDuel. He has since had to resign that position. An avid athlete, Randy regularly used Johnson and Johnson Baby Powder and sometimes Shower to Shower for nearly 30 years. His case is trial ready in Middlesex, New Jersey.

Daniel Doyle. Daniel sadly passed away at 48 after learning six months earlier that he had an aggressive form of

biphasic malignant mesothelioma. A passionate sportsman, Daniel loved his teams at Ohio State, as well as the Cincinnati Reds and Miami Dolphins. Daniel was a lifelong user of J&J's Baby Powder. He is survived by his wife of over 18 years, Kristie, and their son. Christie Doyle is an active member of our Committee. Daniel's case is also trial ready and is pending in Santa Clara County.

Theresa Garcia. Theresa was 53 years old when she passed after diagnosis with Stage 4 mesothelioma. Her pain was particularly excruciating since the cancer touched and impacted every nerve near her lungs. Her surviving family has been crushed by the financial toll. Her case is trial ready in the state court in Illinois.

Brandon Whetsel was a program tester at Teva Pharmaceutical, married to Kristen and father of two daughters. An avid sports athlete, Brandon regularly used Johnson and Johnson's Baby Powder before playing sports. Brandon was diagnosed at age 36 with peritoneal mesothelioma a year after marrying Kristen. Brandon's case is trial ready and pending in Jackson County, Missouri.

Each of these plaintiffs, Your Honor, led vibrant lives and had loving families. Each have suffered and some are continuing to suffer immensely. Each are entitled to a day in court before a jury or an expeditious resolution of this case. We know that the Court is sensitive to their plights and for

that, we thank you. What makes this case unique from the traditional commercial cases is that these claimants have limited windows of time, whether because of illness or the financial plight that befalls the family upon their passing.

We agree that mediation is important, but the exigency of their cases and circumstances compel permitting their cases to proceed to trial. We believe that for these reasons and the others I've noted that the stay should be permitted to permit these cases to proceed. They will be done we believe and completed by year-end with the exception of the MDL, whether in conjunction with a 706 expert as the Court is contemplating or however the Court wishes to proceed.

Thank you.

THE COURT: Thank you. Actually I just have a couple of questions.

MS. CYGANOWSKI: Yes.

THE COURT: Bear with me. I want to walk the process through so I have a good understanding what's been requested.

Among the named defendants in these suits, obviously I think they all have Johnson & Johnson or the old JJCI. There are other protected parties, correct?

MS. CYGANOWSKI: There are. And the view would be -- the view would be that they would -- the stay would be lifted with respect to all non-debtor parties in interest.

THE COURT: I'm trying to see what the impact would

be on the bankruptcy. So let's say, I pick a protected party. Walmart.

MS. CYGANOWSKI: Walmart.

THE COURT: And there's a judgment --

MS. CYGANOWSKI: There's a judgment against Walmart.

THE COURT: -- joint and several against Walmart.

MS. CYGANOWSKI: Right.

THE COURT: What happens?

MS. CYGANOWSKI: At that, no judgment would be entered for execution before returning to this court. And at that point we would see what stage the court -- the case was at. Presumably, it would be an issue to be litigated whether or not the stay would be lifted against Walmart for all purposes so that execution could take place.

THE COURT: But let's -- let me --

MS. CYGANOWSKI: Or it would be a claim because of the indemnification.

THE COURT: Well, that's where I want to go with the question, the indemnification. Let's say Walmart has an indemnification right to put it -- put the judgment to Johnson & Johnson.

MS. CYGANOWSKI: Correct.

THE COURT: Or old JJCI.

MS. CYGANOWSKI: Or old JJCI.

THE COURT: And then under the divisive merger plan

old JJCI or Johnson & Johnson --

MS. CYGANOWSKI: Conveyed that.

THE COURT: -- put it to --

MS. CYGANOWSKI: The debtor.

THE COURT: -- the debtor. That comes out of the funding agreement.

MS. CYGANOWSKI: It can.

THE COURT: It's required. At least my understanding is that the funding agreement requires the debtor to satisfy all indemnification.

MS. CYGANOWSKI: Correct.

THE COURT: So does that then reduce the pot available for other present and future creditors? That's what I'm trying to glean.

MS. CYGANOWSKI: And I understand the Court's questions and I believe that at this point there's no need to answer it today. I believe that I -- I -- let me -- let's put this back in context. First, we're going to trial. We all know that cases do resolve on the eve of trial, either that individual one or perhaps it could be a catalyst for resolution of all the cases. So that's one potential outcome.

A second potential outcome is that the trial proceeds and there is a jury verdict. The order lifting the stay would not permit execution on the verdict, but would require the parties to return to this court. At this time -- at the time

that it comes back to this court, we'll know whether or not there's a proposed plan that's pending for confirmation, either one sponsored by the TTC or one sponsored by the debtor or perhaps both are pending competing plans. And at that point, we'll answer the question.

THE COURT: Would these plaintiffs still be subject to the channeling injunction if it were even under a PPC plan, in other words, a trust?

MS. CYGANOWSKI: These twelve?

THE COURT: Like those that I grant stay relief or relief from the permanent -- from the preliminary injunction. Are they outside the bankruptcy or will there if they secure judgments be able to collect through the trust?

MS. CYGANOWSKI: Again, I think I would leave that question for that day. And I'm not trying to punt it as much as --

THE COURT: No, that's fair. I --

MS. CYGANOWSKI: -- I'm trying to predict where we might stand.

It's certainly possible. There's -- I could see one -- one response can be that they're permitted to have the stay lifted for all purposes, they're outside the plan and the channeling injunction and they have the so-called tort out, which has been mentioned from time to time. I can also see the possibility that the claims -- that the verdict is recognized

as the claim in bankruptcy. That would then be funneled through the trust.

I just think that at this point it's too early to say and I don't think it's necessary to answer that, because to put this back in perspective the purpose of allowing the stay to be modified in these instances is to move the case forward. It has the additional benefit of moving these twelve individual cases forward, but the particular purpose is to move the overall case forward and to allow the parties to revisit where we are and how do we come to a consensual resolution.

Obviously, no one can force parties to resolve and if that continues to be what happens, then it's all the more important that there be these parallel paths and for that, we request that the exclusivity be lifted so that the plan be before the Court, so that regardless we have the track of these 12 cases proceeding to trial, we have a plan before the Court, and we have a way of managing the case -- not managing the case, but pushing the case through what we hope is a resolution that deals with all 40, 50 or 60,000 claimants, depending on how many there are.

THE COURT: Fair enough. Thank you, counsel.

Mr. Satterley.

MR. SATTERLEY: Good afternoon, Your Honor. Joe Satterley from Kazan McClain Satterley & Greenwood, on behalf of Anthony Hernandez Valadez and Audra Johnson.

I've spoke with Mr. Gordon at lunch break and we've agreed that I should go ahead and go so that he doesn't have to resolve in piecemeal or respond in piecemeal.

THE COURT: Makes sense. Thank you.

MR. SATTERLEY: First, before I begin on these individual motions to address Your Honor's question, because I've tried cases with both distributors and the manufacturers, many times the distributors are resolved, settled out, and we only proceed to trial against the manufacturer. In some of the cases, and I'm not speaking to all of them but some of the cases, like I represent Kristie Doyle, Dan Doyle, the only defendants left are Johnson & Johnson, JJCI, so we would only proceed to trial against Johnson & Johnson.

In that particular case, that trial has been scheduled three times, continued and the judge is waiting. As recently as last week wanted to know, "When can I try this case?" and he said he's got a courtroom available in September.

But let me switch to the motions that I filed way back in May on these two individuals and we already argued this on June the 14th and I'm incorporating by reference the arguments that I made at that time. I'm not going to reargue that and I've removed most of the slides and I'm not going to argue in detail the Mid-Atlantic factors, because we've already argued that.

But what I want to do, is give Your Honor just an

update of what has occurred and a few additional reasons why I believe stays should be lifted for these two individuals.

I believe these cases will aid the mediation and estimation efforts. To date J&J, LTL has offered these clients zero.

THE COURT: Let me just stop you for a second. At some point can you provide chambers with a cop --

MR. SATTERLEY: Oh, I apologize, Your Honor. I have it right here.

THE COURT: Oh, thanks.

MR. SATTERLEY: And counsel, too. May I approach, Your Honor?

THE COURT: Yeah, please.

MR. SATTERLEY: I should have known that to give you --

THE COURT: That's all right. Thank you.

MR. SATTERLEY: I was so caught up in trying to answer the questions about the impact of the trials that I forgot to hand it up to Your Honor.

THE COURT: That's all right. Thank you.

MR. SATTERLEY: So I'm not talking about mediation here with regards to the offer of zero because I'm not allowed to because of the confidentiality order, but I've attempted to since April this year with many of the J&J's counsel, at least four other counsel, to negotiate these individual cases. And

they've told me they value the case at zero, that I have meritless cases. They refuse to negotiate.

And I think -- you know, going to trial and having a jury assess all this new science that Mr. Gordon wants to -- wants the jury to assess, that'd be great. I'm willing to address the science. I want the jury to hear the science. If there's some new science that has occurred that he thinks will cause more defensive verdicts, let's see it.

So I think that more jury verdicts without collecting coming back to Your Honor -- as counsel says, coming back to Your Honor before we collect will assist the Court. It will assist the Court. It will assist the parties in mediation also.

So these are the individuals. I already told you Anthony is 23 years old. Audra is now 55. She was 54 at the time of diagnosis. I demonstrated this before that we have, you know, photographic evidence of the product usage at the time Anthony was a baby. I told you that these are not made-up cases. These are cases where the treating doctors support causation. It's not something where we were advertising for cases and running around with no experts. The treating doctors already support the case before the case is even in litigation.

I showed you this photograph here. He hasn't -- he's progressed even worse than he was in June. Let me just go to this other picture. This is a picture from last week. This is

the way -- and I don't show this to Your Honor to seek sympathy. This is reality. This is what happening. Anthony sleeps like this because it's the only way he can breathe. His mesothelioma has progressed. His doctors have said he has less than five months to live. I believe he should be permitted to participate in this trial before his death. And the only citation to law today that is the Mid-Atlantic Handling System, the totality of the circumstances for each particular case.

The reason why I say that is the debtor -- they don't address any of the particularities of any other cases. They just say there's going to be floodgates of cases coming, you know, and we've -- I have specifically only asked for a few cases to be -- the stay to be lifted.

In response to the other argument that the -- that it's a lottery, that we're just a lottery, unlike the debtor or J&J or anybody else to pick any other cases anywhere in the country, if they want to pick one of my other cases, I'll go try that case. So I'll welcome them to pick any other case if they think it will assist, if they think that, oh, he's 23 years old, let's pick a 60-year-old or 70-year-old. Pick of any of them other cases. I'll try those as well.

Turning to Audra Johnson, this is her and her daughter, Marley (phonetic). She's a single mother. Her only exposure to asbestos is through J&J talcum powder throughout her life. We had -- as I told Your Honor in June, we had her

bottle tested. It has asbestos in it. Undisputed -- well, she got mesothelioma. It's undisputed the mesothelioma was caused by exposure to asbestos. This is the high tech procedure she went through and this is her past week. She's on oxygen almost all the time. She can't watch her daughter play soccer, can't go to the soccer games, can't go to the -- any of her daughter's events. She basically stays at home and is on oxygen.

Now, since the hearing in June, June the 14th, she's had progressive breathing difficulties. She was supposed to have a surgery, additional lung surgery for a paralyzed diaphragm. It was scheduled to occur on July the 20th. But her employer -- she is on long-term disability right now, but her employer closed the offices. All the employees were laid off. Her insurance was cancelled and -- retroactive to May and surgery was cancelled due to lack of insurance. So she -- and she will personally be liable, responsible for all medical expenses since May.

So right now she can't have the surgery that she was supposed to have last week because of no interest and she continues to suffer significant breathing problems due to her mesothelioma.

Now, the other reason why I believe the stay should be lifted and, just as Your Honor did and recognized way back in January with the Benson Hill case, we need to gather and

preserve evidence to support our claims against J&J. At some point in time there might be some grid, there might be some system in place, a settlement with -- after mediation where there's certain things have to be proven. Well, I want to be able to have that proven as soon as I can. I want to be able to get the pathology, have tissue digestions done. I want to be able to gather up documentary evidence.

And so the automatic stay and the fact that we do not have the subpoena powers of the court eliminates our ability to do this. Hospitals won't release pathology, certainly most hospitals don't release pathology.

THE COURT: I thought you would have the subpoena powers once the complaint was filed. Is that --

MR. SATTERLEY: Well, Your Honor ordered -- remember, Your Honor's order said, file the complaint and do nothing else, and that's what I did. I filed the complaint, filed and served it, and I did nothing else.

THE COURT: Okay.

MR. SATTERLEY: So if your -- I'm asking Your Honor if you -- and I'll get to my conclusion in a few minutes in a few slides, but the subpoena power is absolutely crucial with regards to developing our evidence for whatever we have to submit, if there's a consensual resolution.

Also numerous cases, and we cited cases in our briefs, the passage of time results in fading of memories and

loss of evidence. Courts have held that that is the irreparable harm.

So I've already touched upon this. I've explained to Your Honor the tissue digestion last time. Basically we would obtain the pathology and be able to demonstrate the exact ingredients in the Johnson baby powder in our client's body. I've done that in numerous cases and numerous jurisdictions.

The debtor in its response concedes that modifying the PL order will have no adverse effect on non-debtors and they did that at docket entry 2429 at page 15, footnote 14, and that's a factor that's I think particularly important. And then they only offer generalities rather than the facts specific to the case and I said that earlier.

So all in all, the balance of the harms to the non-debtors and the balancing of the harms to these mesothelioma victims, I believe clearly weighs in favor of allowing them to proceed with discovery and potentially proceeding with a trial.

So this was a chart, a timeline that I showed Your Honor last month. Because we were only allowed to file the complaint, we were not permitted by Your Honor to file a motion of preference yet. I would like to file a motion as soon as possible. And so I would like -- I'd request Your Honor to allow me to file a motion for preference, allow me to engage in discovery, and I believe the courts in Alameda County will set the case for trial in September of October, based upon having

practiced there for now 12 years.

The other thing I'd say is I'm willing to --

THE COURT: Is that for both cases or just one -- or just --

MR. SATTERLEY: I believe I get both cases set for trial, but certainly Anthony Hernandez Valadez, because the doctors have already signed the requisite declarations that support the preference statute. And most of the time when we have doctors' declarations like that, it's undisputed. The courts set it for trial.

Now, with Audra Johnson, because of her surgery and the -- lack of surgery and the complications, I've got to get a subpoena to be able to talk to her doctors about her prognosis now. So it's clear that I'll be able to get this case to trial September, October for Anthony. Unclear whether it will be September, October, November and just depends on what we're able to gather in discovery. So it's my hope that we can get these cases to trial before they pass away.

My alternative request for relief, Your Honor, as opposed to say, go try your case, is to let me do discovery and report back to Your Honor in 60 days what has occurred and -- or come back to Your Honor before -- you know, allow me to move for trial date to get a trial date set, but not actually go to trial without Your Honor's blessings. And I say that because I'm willing to come back here every month or twice a month or

how often you want me to be here and ask for Your Honor's permission to proceed on behalf of my clients.

So last slide I have is a loss of life. The life expectancy of Anthony Hernandez Valadez, but for the mesothelioma, is 54.13 years and Audra Johnson's life expectancy but for her mesothelioma is 28.85 additional years.

With that, Your Honor, I would just request that the balancing factors set forth clearly weigh in favor of the victims, the plaintiffs, the creditors and the -- as relates to the non-debtors. And as counsel said, we would come back to Your Honor after a jury determination and not execute on any type of judgment without Your Honor's involvement and input. And by that point in time there might -- there may be a plan. The court -- the Third Circuit may have ruled one way or the other. A lot of things may have occurred, but to not allow us to at least work up the case, gather evidence I think would be irreparable harm to my clients. Thank you, Your Honor.

THE COURT: Thank you, counsel.

Are there other counsel for movants?

MR. RUCKDESCHEL: Good afternoon, Your Honor. Jonathan Ruckdeschel on behalf of Paul Crouch individually as the personal representative of his mother, Cynthia Crouch's estate.

We filed a brief objection on behalf of Mr. Crouch to the continuation of the preliminary injunction and I'm going to

talk about a couple things that relate to the filing that we made. But I wanted to start just with a response or an additional comment regarding Your Honor's question to my colleague here regarding, well, what happens with the judgment if they go to judgment against Walmart or you can even use J&J. And counsel is exactly right. The question of what happens depends. It depends on a lot of things.

While I was sitting here, I pulled up one of the indemnity agreements. It's the LTL0018923 is the Bates number. It's an agreement signed by J&J on December 21, 1988 with CVS and that agreement does agree to indemnify CVS if they're found to be responsible for selling a J&J product, but not if there's any finding of negligence on behalf of CVS.

So it depends. It's going to depend in all of these cases what's the contract, what's the finding by the jury. There is no automatic liability under any of these indemnity agreements and that would include the 1979 indemnity agreement that J&J claims automatically requires LTL to indemnify it because under New Jersey law you can't have an indemnity contract -- (cell phone rings) -- it's not me.

UNIDENTIFIED SPEAKER: Not me.

MR. RUCKDESCHEL: Better not be me.

Under New Jersey law you can't have an indemnity contract that indemnifies someone for willful and wanton behavior. Johnson & Johnson has been repeatedly found by

juries to have acted willfully and wantonly and been hit with punitive damages. And New Jersey law forbids indemnification contracts for that and insurance coverage, right? So -- and we've cited those cases in our reply.

But additionally New Jersey law looks very disfavorably upon indemnity contracts that indemnify the indemnitee for its own negligence. And New Jersey has a long and rich history of case law regarding the type of extremely express language that has to be included in the contract if the contract of indemnity is to include indemnity for the individual or entities independent negligence. Cozi v. Owens Corning Fiberglass back from 1960, 164 A.2d 69; more recently Mantilla v. North Carolina Mall Associates, 770 A.2d 1144. Both from -- that's from the New Jersey highest court.

And the contract here does not contain that language. And so, if there is a finding by the jury that Johnson & Johnson has independent negligence, the indemnity contract from '79 is not going to cover it. So it all depends. There's no automatic indemnity under the 1979 agreement under New Jersey law. And the last little bit of that is the contract doesn't contain a choice of law provision. It's signed by two New Jersey corporations in New Jersey. Right. It's notarized. It's actually signed by the attorney and it indicates it was signed in New Jersey. So New Jersey law is definitely going to control. So it all depends. Counsel is exactly right and

there's no automatic indemnity.

So moving on, I was listening to the Court's comments in the June 14th hearing and the Court made a number of statements about there definitely being a limited fund in this case and there's going to be a competition for dollars at the end of the case. And it struck me initially that what we've got here, it would appear to me, is an attempt by Johnson & Johnson and the debtor to create a limited fund from what is currently an unlimited fund and then to force us to compete for dollars in this artificially created limited fund.

But I took the Court's finding. When the Court made those comments, the debtor in J&J sat silently. They have never come to the court and said, no, no, Your Honor, we've got all the money in the world. There's no limited fund in this case. Right. And if there is, in fact, a limited fund in this case then Johnson & Johnson, if it's going to be treated like a debtor and it's going to be extended the protections of the stay through a preliminary injunction, it should be treated like a debtor. It gives away a billion dollars a month in dividends to its common stock shareholders, voluntary depletion of the limited fund.

So if there is a limited fund, Johnson & Johnson can't be giving away a billion dollars a month if what they're demanding in this case is a global resolution that resolves not only the debtor's liability, but also Johnson & Johnson's own

independent non-derivative liability. It's just massively unfair. It violates all sorts of general principles of bankruptcy law that the equity holders can be getting paid a flood of cash, a billion dollars a month, and our clients suffer and die while they wait, while they wait to see if there's going to be some agreement that globally discharges Johnson & Johnson.

And so we're asking the Court -- Mr. Crouch is asking the Court if you're going to extend the preliminary injunction to Johnson & Johnson, make them pay those dividends into a fund for the victims. If there's extra money left over at the end, fine. They can get it back.

But right now what's happening is we're frozen in time, suffering and dying, and they're just flooding their shareholders, 33 million dollars a day. In the 20 days that we adjourned this hearing from its July 6 to today, that's another 666 million dollars.

THE COURT: Are you limiting that request to Johnson & Johnson as a protective party?

MR. RUCKDESCHEL: Yes.

THE COURT: I could look at CVS --

MR. RUCKDESCHEL: Right. Just --

THE COURT: -- Rite Aid, 7-Eleven.

MR. RUCKDESCHEL: CVS is not before this Court asking for --

THE COURT: Well, these are all protective parties.

MR. RUCKDESCHEL: I understand.

THE COURT: And it was the debtor that came before the Court to extend the preliminary injunction for the debtor's benefit. Protected parties didn't come before the Court.

MR. RUCKDESCHEL: And that's why we're not asking about any other retailers. Right. If CVS was here saying, you need to protect me, too, I'd probably have a problem with it, but they're not, right? And we filed a very limited -- a very limited request here. Condition any extension of the preliminary injunction on J&J not continuing to give money from the fund that could be going to victims to its shareholders.

THE COURT: I'm not asking this tongue in cheek.

MR. RUCKDESCHEL: No.

THE COURT: It's a serious question. The authority. If I read Mr. Thompson's -- or most of the briefs out there, they talk about what authority I don't have as an Article 1 judge. Now we're talking about as an Article 1 judge I can limit public company's issuance of dividends. I -- it seems to me that that's an extraordinary power.

MR. RUCKDESCHEL: So you're giving them a choice. I fully expected to get asked that question. I didn't think it was tongue in cheek at all, Your Honor. The reality is injunctive relief is quintessentially equitable relief. It's within the equitable powers of the Court and you can set

conditions on it. J&J has to agree that they're going to do it and they don't get it and if that's a problem for them and they won't agree, fine. They can take their ball and go home. They don't get their injunction. And if that means they don't want to be here in front of this Court because their whole scheme is tied up on getting themselves out without filing for bankruptcy so they can go about business as usual as they brag about on their website, that's their choice. You can give them that choice because you set the rules on what the conditions are for your equitable relief that you're going to give them the opportunity to have. You don't have to go along with them.

Right now they're saying, well, we're going to hold our breath until you get us a consensual resolution and if you don't -- you know, if you don't play by the rules that we've got, then we'll take our ball and go home. Okay. That's fine.

We've had a lot of talk from the debtor today. A lot of talk about how we want to mediate to a fair and equitable resolution. We hear this in pleadings. We've seen it over and over throughout this case. And I would suggest to the Court that the current situation has taken all of the bargaining power of the dying people. And there's only one thing we've got to bargain with, the threat of a jury verdict. Taken it and we've thrown it in the trash, so now we have no leverage.

And in addition to taking away the leverage that we have, the stay and the extension of the preliminary injunction

to Johnson & Johnson has taken all of the pressure off of them. Right? It's like tying our hands behind our back in the boxing ring and giving them brass knuckles, right, and you can level the field. You can level the field and say, if you want to be treated like a debtor, you want to have a stay against litigation for you because you've got all the money in the world, a billion a month they're just giving away, then you can't give away your money. And you get to pick, do you want Basket A injunction and no dividends or do you want Basket B, no injunction.

THE COURT: But the injunction is intended, again, to protect the debtor.

MR. RUCKDESCHEL: But it only protects --

THE COURT: But let me just finish and then --

MR. RUCKDESCHEL: Of course. I apologize.

THE COURT: Even if CVS were to say, we don't want it, we'd rather be able to move and seek indemnification and assert our rights, the idea of the injunction is to protect LTL Management, offensive to many in the room. I understand that. But it's not these protected parties necessarily that have come before the Court to bargain for protection. So that's --

MR. RUCKDESCHEL: J&J has -- I'm sorry, Your Honor. I --

THE COURT: No, I --

MR. RUCKDESCHEL: Johnson & Johnson has. They've

come before the Court and they've asked for just that and they've asked for it with their partner in crime, LTL, which they created for the purpose of getting themselves in front of this Court --

THE COURT: So I said choice --

MR. RUCKDESCHEL: -- and get an injunction.

THE COURT: The other term I read often is stooge, but go ahead.

MR. RUCKDESCHEL: You know, we had to mix it up a little, keep things fresh. You hear this a lot.

So, you know, Your Honor, you have the authority to impose conditions on something that they're asking you to do. "I'll do this for you if," and if they don't like that, okay. That's their choice. But to freeze the rights of individuals like my client while the shareholders of J&J continue business as usual, while new JJCI continues business as usual, which you can go to the LTL website and look right on the front, they say, we're going to continue business as usual while we've got the bankruptcy going.

Well, you know, you don't have to allow that to be. If they're going to be greeted like a debtor and if they were -- if they were before the Court saying, we're only here to get rid of LTL's liability and not J&J's, right, then we might be having a different discussion, but that's not what they're talking about. They're talking about having any

resolution of this case involved not only resolving LTL's liability, but also Johnson & Johnson's independent non-derivative liability. There are all kinds of problems with that. Third Circuit is considering under combustion engineering, and I'm not here to argue about that.

What I'm saying is, if that's part of this deal, if what they're trying to do is get J&J out of the tort system, overcome the tort system, as Mr. Gordon said in April, for J&J and the debtor, then treat J&J like the debtor and don't let them continue to flood their equity holders with a billion dollars a month. It's just wrong. Thank you, Judge.

THE COURT: Thank you, counsel.

MR. PLACITELLA: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. PLACITELLA: So I was sitting here this morning and I was listening to Mr. Gordon say everybody in the room agrees to this, everybody agrees to that. I'm sitting there saying, I don't agree to it. But there is one thing we can all agree on; Maria and Rebecca are awesome.

THE COURT: Absolutely.

MR. PLACITELLA: And I wanted to make sure I get this right to start.

THE COURT: Always butter them up. It gets more benefit than me.

MR. PLACITELLA: In New Jersey a living mesothelioma

victim by order of the Administrative Office of the Courts gets an expedited trial and that trial date is usually set at the first case management conference. And they do that so it's a recognition by the AOC that people should have the right and the opportunity to have their case heard while they are still alive.

I spent a lot of time. I recognize in re-reading this Court's prior decisions that the Court -- this Court believes that a resolution in bankruptcy can provide a prompt, equitable and fair solution for everyone involved. Accept that as a given.

I spent many waking hours and some hours when I should have been sleeping trying to think of a way to convince this court the balance of equities weigh in favor of Kimberly Noranno (phonetic) and others like her for the right to pursue their case now while they're alive and they can meaningfully participate.

I thought about arguing how a fair and equitable solution could never be reached by one party or two parties have all the leverage. I thought about arguing about how the goals of our civil justice system clash with the realities of how Johnson & Johnson is using the laudable goals of the bankruptcy laws to solve a problem on its balance sheets.

Ultimately, I decided there was really only one thing I could do today standing before this Court and that is to

relate to you the extraordinary story of Kimberly Noranno who, like others -- and she's not the only one; she's just an example -- who asked this Court to reconsider its position, do what is right under all the circumstances and let them move forward with their trials.

Kimberly Noranno was born into dysfunction caused by the disease of addiction. As a young child Kimberly suffered unspeakable abuse and was eventually placed in foster care. At 15 Kimberly was turned out to the streets to fend for herself. Her only dream job -- her only dream in her world was one day to have her own family.

Kimberly was eventually rescued by her Aunt Kathy (phonetic) who took her in and adopted her. Kimberly was blessed with seven wonderful children. She used Johnson's baby powder on all of them, believing that she was protecting them as advertised.

Unfortunately for Kimberly, the disease of addiction that destroyed her mother also took hold of her. Fearful for the safety of her own children, she transferred custody of those children to her adoptive mother and entered a residential treatment program. After fighting for 13 hard months to rid herself of her disease she came out and she was reunited with her children. She put herself through college. She graduated with high honors with a degree in alcohol and drug addiction counseling. She went on to become an addiction counselor where

she would dedicate her life, her professional life to helping others overcome hardships just like her own.

Kimberly eventually made enough money to buy what she calls her "forever home" where she would live the life that she dreamed of as a young girl and provide for her children. Today Kimberly's youngest child is nine, Jace (phonetic), and Angelica 14 suffers from autism. Three days after beginning her dream job as the head addiction counselor for the City of Salt Lake, Kimberly was diagnosed with mesothelioma. Since that time, Kimberly lost her income, was forced to sell her forever home, and has no way of supporting her minor children.

I would ask the indulgence of the Court for two minutes to listen to Kimberly as she testified in her deposition and she asked that I be able to play it for you. Johnson & Johnson was invited to participate in the deposition and they declined.

(Video played)

"MS. NORANNO: So in my profession one thing that I taught my patients is radical acceptance and so I'm through accepting that I'm dying. Instead of me having a bucket list of things that I want to do before I leave my body is let my closest friends and family, let them know "What is something you would like to do with me to make a memory before I'm gone," and so I've been fulfilling those wishes, like went stargazing with my oldest daughter. And my son, who's only nine years

old, his memory that he would like to make with me is just the simplest. Making smores on the beach, so that's something the we still have to do.

"My daughter -- my daughter would like me to go to school with her all day and so that's something that's been arranged. I have a mother/daughter who wants to cook with me all day (indiscernible). Some days are heard and some days aren't. Today is a hard day.

"My fears are, one, that my nine-year-old won't remember me; my grandchildren aren't going to remember me; and I have a fear that my oldest daughter, who's a single mom who's taking on the responsibility -- we don't have a house anymore. She works as a hairdresser. I'm afraid that they're not going to have somewhere to live. She's so scared, too. She's so scared.

"And my hope is -- I'm a very spiritual person and so my hope is that everything is going to be okay, my family will be taken care of, my kids will be taken care of. I will be made comfortable and my last, however long it takes for me to leave my body, my hope is that Johnson & Johnson will be responsible and help with my kids, help with raising my kids and providing what I will no longer be able to provide because I was providing them excellent and wonderful, magical life for them and I made sure that I made memories. And that's -- and taught them love and respect and kindness and giving to the world.

"And that is my hope that they know that no matter what happens, that we stand up. We get up, we do what's right, we keep on giving. That's my hope."

(End of playback.)

MR. PLACITELLA: We stand up. We get up and we do what's right. My hope is this Court will see the path that the plaintiffs have laid out here for evening the playing field and decide that the equities here lie not with Johnson & Johnson, but with Kimberly and her family, giving them the right and the chance for a compensation that the law allows and every other person adversely affected.

Thank you, Your Honor.

THE COURT: Thank you, counsel.

Mr. Thompson.

MR. THOMPSON: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. THOMPSON: Ray Thompson again. I'm going to cut out my slides because a lot has been covered. And when you quote some of the stuff I've written, it means I don't have to cover it here in court, so that's a good thing with that.

So one of the things that I heard from Ms. Cyganowski is risk and that's right. And, see, the problem with all of these two-steps is there's no risk with a non-debtor. And I briefed extensively on the dividends and how much they pay in dividends. And in your opinion you noted, well, what burden --

you didn't see a burden that J&J and JJCI were avoiding by doing this. Well, a big one is a billion dollars a month.

And so something ought to be done equitably with that. And especially when I look at that and I realize that J&J settled a super majority of the mesothelioma cases in the jury system for less than one percent of what they paid in dividends during that time period.

So that's not irreparable harm to them and it sounds like it's -- our clients are being deprived from resolution and this is money that J&J is throwing out the window. They don't need it. This isn't revenue. This isn't cash on hand. This isn't assets. This isn't the royalty stream from Rogaine. This is money they're throwing out the window to their shareholders.

So I join in their requests. None of these cases are even mine. I would be in favor of lifting the injunction for everybody right now because what would happen if that happened was they'd manage. They'd resolve the cases and people would be getting paid just like they were doing in the jury system beforehand, all the while dividends were going up.

And so in speaking of the injunction specifically and kind of the position we find ourselves in moving forward in this case, Hertz, JCPenney and Garrett Motion were in bankruptcy total 27 months because they didn't want to be in bankruptcy. Right? They wanted to be in business.

So the two-step model is a stooge that doesn't make anything, doesn't sell anything, doesn't have any employees, no reason to get out of bed in the morning, they want to be in bankruptcy. They're made to sit in bankruptcy and beat up the plaintiffs' bar. Then the injunction benefits the wealthy non-debtor and that's how you end up ten years of bankruptcy court time trying to figure out a way to outwit the Seventh Amendment. And so it doesn't work. I've been living it. It doesn't work.

As to -- I was going to address this in my estimation, but just about a path forward, my suggestion is that the Third Circuit is going to be -- appears very eager to rule on this case and, you know, you -- on March 30th you recognized that maybe they would be interested in the short term to decide this case. And I'm grateful that you certified your rulings for the appeal. They appear to be eager. They didn't have to take the case. They took the case. They're going to rule on the case. Expedited briefing. Three months briefing is going to be done, arguments are going to September 19th. We're going to have a ruling.

And so to me it seems like other than lifting the injunction for these people and all the great arguments that were made, not only is it we're going to save 50 million bucks in fees from all sides, whatever the Third Circuit does is going to inform what we do moving forward in this case, I would

think.

And so the two-step doesn't work, hasn't worked in ten years, it's not going to work in three months. So let's just pause. Let's pause for three months and let's save some money.

THE COURT: But is it really three months in fair --

MR. THOMPSON: Yeah.

THE COURT: We know there's an en banc potential. There may be a remand potential. There may be a further appeal potential.

MR. THOMPSON: We --

THE COURT: What I'm worried about, and I -- a standstill is attractive. Hell, as much as I love seeing you all, it's attractive, but is it pragmatic and realistic given the different avenues, different rulings that can come out of the circuit?

MR. THOMPSON: Well, there's certainly -- I mean, look, I confess to you I'm not a bankruptcy lawyer, so the number of options that the Third Circuit could do, I can't speak to be an expert on that.

We can revisit it. If we get to the middle of October, I'm not going to hold it against the debtor. If we get to the middle of October and the Third Circuit hasn't ruled or end of October the Third Circuit hasn't ruled, we could pick back up again, start talking about whatever we're going to be

doing in this case.

But essentially what it seems like we're doing is we're conducting a trial while the summary judgment order is on appeal. And, you know, Mr. Gordon said, well, I don't know what's going on in mediation. I don't. I have no idea. I don't care because the problem is that they're trying to jam down an aggregate resolution which we, Monte Ray (phonetic), will never accept and so let's see what the Third Circuit does and let that inform how we move this case forward.

And one of the things you also noted in your -- it was either your motion to dismiss order or your preliminary injunction order was that the jury rights could be protected in the TDP. Well, where's that? Right? Where's that option? You know, they don't -- I think it's pretty clear they don't want that to be an option. What they want -- see, this is the problem overall in this case. They demand and will only accept what no one has power to give them. That's a problem. They don't ever want anybody to go in front of a jury about baby powder ever again.

Well, there's a problem with that. It's unconstitutional. And so we're just going to try to figure out a way to give them the only thing they'll accept. And so if there's an opt-out that the TTC wants to propose, let's see it. Maybe there is something that can be done. I think we're not going to hear from them because J&J was settling because they

were losing and risk -- I'll talk -- I didn't address the Olsen (phonetic) -- he brought up the Olsen verdict. Yeah, there's risk and that's why most of the time we settle. I think the -- we got hammered. The plaintiffs' part got hammered in the motion to dismiss trial like as if we want these verdicts, we want these verdicts.

What we want is our clients to be fairly compensated and most of the time that happens because they settle and that is what happened. That is what happened for our clients. And so they could take a flash drive. They've got all this information up in New Brunswick. They've got a settlement history that has a flash drive of every case they settle. Let's take a look at that, share it with everybody. We don't need -- that takes a day and a half.

We settled a lot more cases than were tried and Olsen wasn't offered any money for the trial. So if zero is the offer, that's when you go to verdict. And so I think that the challenge with this case is no one can give them what they require, so let's just stop trying. Let's stop trying to do it for a few months and let's see what the Third Circuit says.

And I would note, you know, the Olsen case, yeah, that's a bad ruling for us and a week ago they would have said, well, that -- it's a great verdict for the plaintiffs, but it's on appeal. Right? So we're going to try to go up to the Court of Appeals in New York and see what happens there. And I would

reiterate, however, that Mr. Olsen seems to be the exact person that J&J claims they're worried about, the person who goes to verdict and wins or loses or gets overturned. And I'm telling you right now, Mr. Olsen objects to this bankruptcy even today.

And so unless and until the Seventh Amendment of the United States Constitution is revoked, our clients are going to demand jury trials and if J&J doesn't want them, tough. You know, my clients don't want to be dying from asbestos exposure and the reason they settled was because juries kept finding asbestos in the baby powder. Thank you.

THE COURT: You're welcome.

Anybody else? Your side.

MR. GORDON: I do have a PowerPoint, Your Honor. May I approach?

THE COURT: Yes, please. Thank you.

MR. GORDON: Hopefully our slides will come up here in a moment.

Blaine or Gary, are you working or are you on a lunch break?

THE COURT: Do you need to take -- you can take a few moments. Do you want to take a five-minute break?

MR. GORDON: Yeah, can we take a break?

THE COURT: Five-minute break.

MR. GORDON: Sorry for the delay, Your Honor.

THE COURT: Sure everybody welcomes it.

(Recess at 2:51 p.m./Reconvened at 3:00 p.m.)

THE COURT: At your pleasure.

MR. GORDON: Thank you, Your Honor. Greg Gordon again on behalf of the debtor and I appreciate the additional time to get our slides in order here.

Before I turn to the slides, though, I did want to say at the outset, obviously through various counsel you heard stories related about a number of individuals with very horrible diseases. And I just want to note for the record that from our standpoint we are extremely sympathetic and we're sorry for those individuals, but at the same time we have to point out that in doing all that there's an underlying implication that our products are at fault or the cause of those diseases. And I would just reiterate again for the record, and I know we're criticized for this, we do not believe that, we do not believe our products caused that. And although these people are deserving of sympathy, we don't believe that that has anything to do with us. And, in fact, J&J is a company that's all about making products that help people and preserve lives and make people's lives better.

And, you know, from our standpoint we're talking about diverting dollars from those objectives of the company to deal with a situation where we don't believe we're at fault. But notwithstanding that, again, this is a company that's prepared to resolve these issues in a very favorable way for

the claimants and we want to do it as quickly as possible. But I -- again, I would be remiss if I just didn't say something about all the time that was spent on individuals. We just do not believe we're responsible for the diseases that they have.

First slide, please.

So, Your Honor, I'll go through these fairly quickly and there's not that many because I think I covered a number of these points already today, but we don't think you've really heard any legitimate basis for this concept of lifting the PI order to allow what's now twelve cases to proceed. And I guess it's not just twelve; it's twelve, plus the two clients that Mr. Satterley represents and perhaps the client that Mr. Placitella represents as well, and I don't think there was a motion filed with respect to that client.

But I was just struck by the fact that the arguments that were made were that this will be very helpful to the process if we have these cases. These are a test and these are allowed -- don't go in to allow the parties to make progress in settlement negotiations. To me, what's missing from that is they're not a test, in our view, from the standpoint of what we're here to solve, which is the company's aggregate liability for talc claims. All these will do is provide further information that may inform particular cases, but how that's helpful to a process where we're attempting to use Section 523(g) as it was intended to be used, to resolve these

claims on a global basis, is beyond me and I don't think anyone has addressed that point at all.

The other point I would say at the outset, I think much of what you heard from the claimants and from the TTC is really an effort just to relitigate issues that Your Honor has already resolved in this case. And Your Honor had said back in June, as I recall, you didn't want the parties to do that. But what I heard, particularly from the last few counsel, were just arguments essentially suggesting that you got it wrong when you didn't dismiss the case, you got it wrong when you entered the preliminary injunction, you shouldn't have covered the protected parties.

And Mr. Thompson even said, I think on behalf of his client -- or no, maybe it was Mr. Placitella. The request is that you reconsider your orders. Well, that's not what we're here for and I'm not going to address that.

And as I said earlier today, this is the problem we have in these cases that the plaintiffs will continue to argue and reargue and reargue and reargue in a situation where the company wants to move forward and we want to get to a consensual resolution as soon as we can.

And obviously, as opposed to lifting the stay here for whether it's twelve cases or ninety or something in between, we don't think that's the best approach for all the reasons I said this morning. We think an estimation process

set up in the way that we proposed or something like that is the better way to go.

Next slide, please.

Again, Your Honor, I'm not going to belabor this slide as I think I covered these points today. These twelve cases that the Committee focuses on have been self-selected. I think Ms. Cyganowski even acknowledged, well, some of them may be in plaintiff friendly jurisdictions. And, you know, just think about that from the standpoint of trying to move this case forward. How is it helpful to allow cases to go forward in jurisdictions that the TCC have meso plaintiffs friendly? What's that going to do, what's that going to change either from the plaintiffs' perspective or the company's perspective in terms of how to resolve this case?

Obviously we had no input in terms of this sample or this group of cases that was selected. And it's not a statistically appropriate sample. It's not presented as a random sample or representative sample and we would submit, Your Honor, at a minimum if we were to go forward with some sort of group of cases, and we don't think any group is appropriate, it'd be done in a way where it is a true random sample. It's determined some way -- you know, that's statistically proper, that's scientifically proper.

And then, of course, you know, we believe that the Committee is overstating how quickly these cases can move

forward because of pretrial issues and discovery and the like that's going to have to proceed in at least some of those cases.

Next slide.

THE COURT: Let me just ask a quick question. This slide when you reference the fact that the average age of proposed meso claimants, approximately 46 years old is 20 years younger, it would suggest that you have data on these, do you have comparable data on the ovarian claimants? In other words, I'm trying -- I'm going back probably the prior arguments on estimation and what's needed as far as discovery. It would seem that if you could produce this that there is that data out there.

MR. GORDON: I --

THE COURT: Is that a fair assumption?

MR. GORDON: Yes, we have some data, Your Honor. I believe that we have a fair amount of data on age, but there's lots of other data that we would not have. And, you know, we'll be -- if the Court authorizes estimation, we'll be prepared to go through that in some detail in terms of what we have and what we need.

THE COURT: All right. Thank you.

MR. GORDON: Next slide, please.

And Your Honor probably remembers some of the information on this slide from the hearings back in February,

but prior to the bankruptcy we were averaging trying about eight cases per year. Now the suggestion is that we'll try 12 cases in about five months, if I heard the TTC right. And there's just -- there's no evidence or no experience that the parties have to suggest that that could ever be possible or that that could be done in a way that wouldn't be prejudicial to the company.

Sure, we have many defense counsel. I heard Mr. Satterley say that. But those counsel are involved in different jurisdictions and the like and we've never been in a situation where we've been put on the spot and would have to basically defend, I think what they're proposing is 12 cases at the same time. But could the courts do that as well? I think that's highly questionable. And again, there's various pretrial issues. Venue is definitely going to be an issue in these cases.

And all of that from our point of view, as I said earlier, is just going to divert the attention of the parties in this court from the real issue that we have to confront in order to resolve this case and move forward.

Next slide, please.

So, you know, this idea that, you know, the suggestion is, as I understand it, that the litigation would go forward only as to protected parties. In other words, non-debtors, not the debtor, and that shouldn't be a problem

because the debtor won't be involved. But that runs counter, I think, to the finding that Your Honor made when you issued your preliminary injunction order which is, in effect, the debtor is the real party defendant here. It's going to have to be involved in this litigation.

So you just can't separate the two that way. You can't look at it that way. It almost sounded when I heard Mr. Satterley and some of the others' counsel that they're suggesting that the -- it's a different liability. And I think what the -- what we've been able to show and what we did show back when we talked about the preliminary injunction is the liability here that encompasses these protected parties, it's the same liability. LTL has the liability. It encompasses -- you know, it's the same liability that the retailers potential has, that J&J potentially has, and so there's no way to just parse it out and say there's no impact on the estate. I think you were asking, what is the impact on the estate, and that goes right back to your finding that the debtor is the real party in interest because they're the same claims. It's the same liability, same product, same allegations of usage, same time period, same damages. It's all the same.

I mentioned this, this morning, but you can see it now on the slide. Their proposal entails just cutting off these cases at trial. Once there's a decision at trial, once that's a verdict, that's it. These cases don't go any further

and they've done that because they recognize that the company has had a significant track record on appeal in overturning verdicts. So they're saying, well, let's go ahead. We want to test -- we want to test -- have some tests to inform the parties, but they don't want to complete the test. They only want to go as far as they think will likely improve their chances, but they don't want to take it through the full process where we'd have the right to seek to overturn the judgments on appeal or the verdicts on appeal. And you can see again the 3.3 billion-dollar number that I referred to this morning.

And then I also alluded this morning to the Olsen case and you heard Mr. Thompson, I think, mention it a couple of times. Again, that was 120 million-dollar mesothelioma judgment and the appellate court said:

> "Plaintiffs failed as a matter of law to carry their burden to establish sufficient exposure to a substance to cause the claim adverse health effect. Case reversed."

And that literally just came down about a week ago.

Next slide, please.

The argument advanced by the Committee and others is that if we litigate these one-off cases that's going to move the case forward because it, again, will be a test. It will provide additional information. It will add to the body of data. But look at what they said in their estimation reply.

With respect to this exact same issue, but this is an opposing estimation, they said:

> "The parties already have substantial information which can be produced and shared immediately. J&J has been litigating these issues for years in the tort system. Verdicts have been rendered. Appellate courts have ruled. The parties have been through discovery. Both sides understand each other fully. J&J has been settling talc claims for years. All of this data is presently available."

Well, that's what they argue in estimation. Then they argue the exact opposite when we come to the question of whether the preliminary injunction or the automatic stay should be listed -- lifted and it's just unclear. How is it that there -- if there's sufficient information so that an estimation proceeding isn't necessary, why is it then there's a need to litigate 12 additional cases to generate additional information? It's a completely contradictory argument.

Next slide.

We believe that having some additional cases litigated in addition to I think the almost 50 that were tried in the tort system is not going to inform the parties' views in any meaningful way. It doesn't address at all the issue of aggregate liability.

And I should pause at this point because, you know,

the Committee is coming in saying, we need to go with this pay-as-you-go idea; we can't imagine why the company wouldn't go for that. But to my knowledge, Your Honor, I can only think of one asbestos case that didn't involve a complete and final resolution of the liability. In other words, the case where I believe, as 524(g) contemplates, a company can resolve the liability, put it behind them. In other words, fund the trust, put it behind them and move on. And that's why there's so much in 524(g) about the channeling injunctions.

The only case I'm aware of that's the exception to that, and I -- someone can prove me wrong -- is the Honeywell case, which I've always thought -- well, it's a case I think all sides would agree didn't have the salutary results that people were looking for on either side in that case. But every other case, as far as I know, there was a fund that was made available that was paid. The debtor and its affiliates were permanently enjoined. The liability was done and the trust took over and managed the claims on a go-forward basis.

We think if Your Honor were to lift the injunction that's going to eliminate any incentive for the parties to mediate through that while that process is ongoing. It's almost, as we say here, a counter motivation. If both sides then are just going to wait and see if they can obtain some favorable judgment in some individual cases, but that's, from my perspective, a fool's errand because, again, it's only a few

more additional cases. And you heard today we pointed out the fact that the last four ovarian cases where the new science was presented, we won them all; then you heard the other side come up and say, yeah, but we won trials in mesothelioma cases, and then there were settlements. Nothing is going to change that dynamic or certainly litigating 10 or 12 or 2 or 3 or whatever it might be additional cases in the tort system is not going to change that dynamic.

And I guess the last point on this slide is if -- again, if we want to move down this road, there should be a true random sample of cases that would be the subject of that litigation, which means we'd have to have a determination about not only how many of those cases there should be, but how that sample would be drawn and that could be litigation in and of itself. We have that litigation going on in other cases. Okay. What is a random representative sample, do we need to bring the experts in to opine on issues like that.

Next slide.

We don't think, Your Honor, that there is any change in circumstance that warrants modifying the injunction or Your Honor's ruling on the automatic stay that this -- at this time. I mean, the only arguments that we've heard advanced to suggest there's been a change in circumstances are ones the court would have taken into account or did take into account in connection with its rulings. You know, one is, well, now there's the

possibility of estimation on the horizon. Another is, well, a mediation hasn't resolved yet. That would be a changed circumstance.

The fact that more time has gone by, that's a changed circumstance. I heard today the fact that the appeal was certified, that's a changed circumstance. I don't think any of those are the types of things that would warrant modifying the injunction because they would have -- all those things could have been taken into account. None them, in our view, affect any aspect of the underlying reasoning of the Court's decision on the preliminary injunction order.

Obviously, again, we would like to have been able to say that we've reached a settlement, but if you step back, the case has only been pending about nine months and the first five months were consumed with litigation that the other side wanted to pursue. They had every right to pursue it. As Your Honor remembers, we came in on day one and said we were prepared to mediate right away and do it in parallel. The Committee resisted that. Your Honor, I think, rightly so said, look, their heart is just not in it. There's no point in doing it. Let's get through the litigation and see.

That's a long way of saying in a case of this size and this complexity to more or less give up on the injunction ruling and feel like a material modification is necessary because mediation hasn't been reached in four months we submit

is not a proper basis to modify the court's judgment.

Next slide, please.

There are lots of parts of the opinion, the PI opinion I think we could have referred to here, but the court found in the PI order that that order did not prejudice claimants. The opinions said:

"Talc claimants will not be prejudiced through the issuance of a preliminary injunction and will, in fact, benefit from the extension of the automatic stay to the protected parties in the handling of their claims through the bankruptcy process. This method of dealing with claims also protects the interests of future claimants, prevents a race for proceeds and promotes the quality and distribution."

And I would respectfully submit, Your Honor, that nothing is changed with respect to that reasoning. All the points that Your Honor made back in March of this year apply equally today.

Next slide, please.

Your Honor, this is just a slide. I'm not going to spend much time on this. There's been a lot said about the -- in the briefing about the Diocese of Rochester case. I think what's most noteworthy about that case is that three years had gone by, three years of unsuccessful negotiations. I think there had been a number of extensions of standstill agreements

and the like and I think the court there decided at that time, particularly when the Diocese was threatening a cram-down plan, that enough was enough. It was time to allow the injunction to lift.

That's very different, I would say, that where we are in this case. Very, very different. We're at the very beginning of a time spectrum, whereas that case, they were very much further down the road, if not getting towards the end.

Next slide.

I'm not going to belabor this, Your Honor. This was raised -- these arguments have been raised both in connection with estimation and the preliminary injunction that we've authored a script dictating the timing and the case is a script that -- whose sole purpose is to promote delay. And, you know, I don't really know what's appropriate with respect to courts talking to other courts, but certainly from my perspective having you talk with Judge Byer or Judge Whitley --

THE COURT: Well, I'm not talking to him.

(Laughter)

MR. GORDON: Did you say you are or you're not.

THE COURT: Oh, we're not talking now. Just --

MR. GORDON: Well, as I said, no idea.

Anyway, and I've made my points about this. I -- we strongly dispute the idea that anything we've been doing -- anything the companies have been doing in those cases has

caused the delay in those cases. And we think the picture that's been painted by the other side is very, very inaccurate.

Next slide, please.

And this is really more of the same. Same is true in DBMP and Aldridge, unfortunately, given where we are in those cases.

I should note in Aldridge, Your Honor may know this, a settlement has been reached with the FCR in that case. We have an independent FCR, but to date the Aldridge committee has refused to engage in settlement negotiations notwithstanding an agreement has been reached with the FCR.

Next slide, please.

So, Your Honor, this is the legal point that I think Ms. Cyganowski was very dismissive of. And this is the question of whether the appeals have temporarily divested this court of the ability of modifying the injunction as requested by the Committee in any event. And we've tried to lay out these cases for Your Honor.

I never liked telling a court that it doesn't have jurisdiction. I say that with the most utmost respect. But from perspective, the Committee chose to appeal an order that permitted Your Honor to revisit the issue every few months. And what they're doing, I think, through their request is essentially asking this Court to revisit issues that are the subject of appeal or otherwise to take action that's not action

intended to preserve the status quo or preserve the integrity of the appeal. So we do think these cases present a problem in terms of what the Court is able to do with the request made by the Committee and the other parties.

Next slide, please.

And it's really -- again, I'm not going to belabor this. More on this rule and the interface between this rule and Rule 62(d) of the Federal Rules.

Next slide, please.

So really just cover a few points just to respond to some of the arguments that were made by the other side that weren't picked up in the slides. One of the things I heard more than once this afternoon was that Your Honor basically made a mistake when you entered the order as you did back in March because you put the claimants in a situation where they have no leverage. No leverage. And the company -- and the other side of it is the company has no incentive to move the bankruptcy forward.

And again, I would just reiterate what I said before. I don't think there's any evidence to indicate we've done anything other than attempt to move the case forward quickly.

And in terms of the leverage, it seems to me all you have to do is look at 524(g) and the 75 percent consent requirement and reject the point of view that the plaintiffs have no leverage.

The other thing, Your Honor, there was a request. I think it was by Mr. Ruckdeschel that -- and Your Honor obviously made the right point about the extent of your authority, but he stated that J&J should be required to fund its dividends to public shareholders into a trust for the benefit of the victims. And I was struck by that only because we filed a motion to fund two billion dollars into a QSF months ago for this -- the sole benefit of the plaintiffs and all we've received pretty much in response to that is opposition and more lately now -- or more recently now requests for discovery with respect to that.

So it's interesting that you have counsel coming in saying money should be set aside in a trust for the benefit of the plaintiffs and we've been attempting for months, since basically virtually the inception of the case, to put money into a trust and we've received nothing but opposition to that.

I think with respect to Mr. Satterley, I would just say that I think the issue -- you know, he says we've never been willing to settle with him and settle these claims of these two individuals. And of course, the problem we have is, how do you differentiate those individuals from the other 40,000 claimants we have in this case and how do you basically justify treating them differently from everyone else who's subject to the injunction. And I think honestly that's the same issue Your Honor would have to wrestle with in granting

specific stay relief as requested by him. If you grant the stay relief with respect to his two clients, how do you justify denying a similar request from other claimants? I mean, what would serve to differentiate those cases from any of the other thousands of cases? It seems to us that's a slippery slope and just a way ultimately to an end where the injunction is just set aside on the basis that you found that a couple were deserving of an exception and there's no real basis to distinguish those situations from the situations of other claimants as well.

THE COURT: Mr. Gordon, what's the status of at least -- and you just may have to remind me -- there had been a protocol agreed to in extremis situations. Is that still in effect?

MR. GORDON: Yes.

THE COURT: And what's the scope of it?

MR. GORDON: Well --

THE COURT: In other words, what's -- how much is agreed to or consented to as far as actions that can be taken?

MR. GORDON: As I recall, and I'll just confirm this --

THE COURT: Yeah.

MR. GORDON: -- with Mr. Prieto to make sure I don't mess it, but as I recall it was generally focused on preservation testimony for the plaintiffs, that the plaintiffs

have the right to preserve -- or that -- plaintiffs' counsel have the right to preserve the testimony of the plaintiffs and that's been happening in many, many cases.

THE COURT: But that -- so that -- it does not extend to third parties or --

MR. GORDON: Let me just confirm that.

THE COURT: -- or anyone else?

MR. GORDON: I don't believe so, Your Honor.

(Pause)

Yeah, Your Honor. Mr. Prieto is reminding me. It also incorporated a similar preservation protocol that was in play in the MDL as well.

THE COURT: Okay.

MR. GORDON: And I don't know the exact contours of that, but that's the extent of it. But I think generally, no, it did not apply to third-party discovery and I should -- or third parties. And I should address that because, you know, again Mr. Satterley is making representations that I'm not in a position to dispute about memories can be lost, documents can be lost, evidence could be lost. But it -- but the point is that if -- if the stay is permitted to be opened now, not only to allow preservation testimony for the plaintiff but any other discovery that plaintiffs' counsel thinks they need or they would like to preserve and you look at that across the spectrum of 40,000 or so cases, I don't know how that's going to be a

manageable process.

So all I would say to Your Honor is, if that's something that you're seriously considering, I would like on behalf of the debtor to ask that we have an opportunity to sit down and think about that because of the ramifications that that would have across the spectrum of cases which I would worry would make it a very, very unmanageable situation.

THE COURT: All right. Thank you.

MR. GORDON: And again, I'd like an opportunity also to understand what the real risk as there is -- like if the concern is the hospital records are going to go away, I imagine we can find out how long hospitals keep their records and I imagine it's a long period of time.

So I guess from my perspective, I'm somewhat skeptical that there's some kind of emergency step that needs to be taken to preserve testimony like that. I get it with the plaintiff who's got a terminal disease. We get that and we've always agreed to that carveout, but taking it another step beyond that to me, at least from our perspective, we'd have to spend more time on that.

THE COURT: All right. Thank you.

MR. GORDON: Thank you.

And I think fundamentally, Your Honor, that's it because I -- I don't want to be repetitive. Our view is, as Your Honor knows, that you really are faced at this point with

two paths to move forward. One is a path that to us focuses on the issue that needs to be focused on and it brings to bear the expertise of subject matter experts. It integrates mediation and it does so on a time frame where there's many steps along the way including, and only a couple of months, where there are good opportunities to reach a settlement that's been elusive so far.

And that contrasts with a proposal to lift the stay for what we view as a cherry-picked number of cases that will do nothing in terms of providing information the parties don't already have, will provide no information on aggregate liability. And on -- and I think by the TTC's own admission isn't going to add anything to the knowledge base of the parties, particularly because it just would focus on individual claims.

And then otherwise, we've talked about the plan before, the plan process. We think that's premature. We understand that it may be appealing to the Court to move down the road with a plan process. But at a minimum we would say if Your Honor is inclined to do that, we would ask that it be done in a way where we can obtain the discovery that we think is very important for our case, discovery we think -- and information we think Your Honor would want, that the experts would want to evaluate the positions of the parties. And so we would certainly want to be heard on how that process would be

conducted to make sure that we have the opportunity to make the case that we believe that we have a right to make.

THE COURT: All right. Thank you, Mr. Gordon.

MR. GORDON: Thank you.

Ms. Cyganowski.

MS. CYGANOWSKI: Melanie Cyganowski for the Committee. Just a few points, Your Honor, to in some instances clarify the record.

To begin with, the last point just made, no one, no one has asked this Court in connection with the pending matter for discovery to take place in all 40,000-plus cases. We have asked for the 12 cases to be permitted to be pursued at trial. There's been two or three other parties who have stood up and specifically asked for their cases to be allowed to proceed to trial, but no one today or in prior papers leading up to today has asked for discovery to be lifted in all 40,000 cases.

I say that because I also want to make clear, because apparently it wasn't, that the TTC is not seeking reconsideration or reargument of any of the issues regarding the preliminary injunction. Rather, we are responding to the invitation at the June 14th omnibus hearing, as well as in the Court's prior order that the circumstances be revisited. And specifically, at the June 14th hearing, the Court indicated that upon its revisitation of the PI order it might consider carving out from the order a "small segment of talc cases to

proceed at trial."

We took that as an invitation to respond. We did. We provided this Court with initially a list of 90-plus cases that were across the country. We were soundly chastised that it was 90 cases, how dare we put forward to the Court the possibility that some or a segment or all of them might go to trial. We worked on that. We refined the -- the list to bring it down to a more -- what might be perceived as a more manageable number, and we presented that to the Court.

But the point, as I said earlier, the point of these trials is, while it certainly services and benefits those 12 plaintiffs in those particular trials, the point of this is to change the status quo. The status quo is not working.

We've been in mediation for weeks, for months, and we haven't reached a resolution. And I don't believe any party can stand up and say that we're on the cusp of a resolution. We believe that it's important to change the playing field.

One way that does that is the old-fashioned way. Let's go to trial. Let's go trial. We suggest these 12 cases. We've put them before the Court and the debtor and other parties.

I never said that all 12 were in plaintiff-friendly jurisdictions. If my words were confused, let me be clear. They were chosen regardless of whether they're in plaintiff-friendly jurisdictions.

The notion that letting these 12 go to trial impacts LTL is -- is, frankly, difficult for me to comprehend. We cannot forget that LTL is a shell. It's not an operating business. I think it has three of the points, maybe four.

The cases that are going to be litigated are going to be litigated by non-debtor companies. I'm failing to see how it is that these 12 trials, were they to go forward, would suddenly adversely impact this bankruptcy case.

The last point that I'd like to just briefly comment upon is this notion of changed science. Yes, there have been some reversals in several ovarian case judgments. In some instances, that was due to the Supreme Court case dealing with certain issues of personal jurisdiction. The parties were prepared to address those issues, and this case was filed and the injunction took place, and so they never were. So I think it's wrong to leave the implication that somehow it's changed science that has led to these reversals.

That's all I have. Thank you.

THE COURT: All right. Thank you, Ms. Cyganowski.

MR. SATTERLEY: Good afternoon, Your Honor. Joe Satterley again. Just a few comments.

First I want to address something that we already argued, but was re-raised again, is Your Honor's jurisdiction to modify the order. We argued that in June. I think it's real clear the Ortho Pharmaceutical v. Amgem case, 887 F.2d

460, 1989, clearly supports Your Honor's ability to modify the order as you deem fit. And so they continue to argue that you don't have jurisdiction. The law is clear on that.

I want to just address a few things from Mr. Gordon's PowerPoint. The bullet point, the average age of proposed mesothelioma claimants approximately 46 years old is 20 years younger than the average age of mesothelioma claimants generally 66 years. That's on page 3, the fifth bullet point.

Well, it's not surprising that when babies are exposed to asbestos when they're six months old or one year old, the latency time frame for the resulting disease, the science is very, very clear that the latency is shorter and they're going to be younger.

When I first started trying mesothelioma cases in 1997, most of my clients were first exposed when they were in their early twenties, when they were in the workforce and when they're working as pipe fitters or insulators. And yeah, they're going to be in their sixties or seventies or eighties.

So it's not only common sense, the science supports it, that these folks are younger, just because their exposure is so much earlier. So that makes perfect sense.

The second issue that counsel raised that they would challenge venue of these cases. Well, first of all, in the Doyle case, which is -- they already challenged venue three years ago and lost on that, and they've already lost on every

motion to dismiss in Santa Clara County.

So that's -- and they have never successfully changed venue in any of the mesothelioma cases, whether it's been in Kentucky, New Jersey, L.A., Oakland, anyplace I've been, they've never been successful at changing venue in any, because I don't forum shop. There was exposure there. There's the defendants that reside there. The cases are where they need to be.

Finally -- or not finally, but the next point is counsel says these non-debtors have the same liabilities as the debtor. That's not true at all with regards to these cases. Having tried these cases, juries put apportionment of liability on it. Every single case, there is a percentage of responsibility placed.

And we put on evidence if the distributor knew about it and didn't do something about it, the jury can assess that. The jury in the most recent verdict, Prudencio, the last bonded judgment, the jury put a certain percentage on J&J and a certain percentage on JJCI. So -- and they assess that. And that varies also from state to state, because the law is different in each state.

The next point of counsel is that we want to cut off their ability to appeal. I'm willing, if they want to appeal any of my judgments, we've done it before -- the Leavitt case was affirmed on appeal after -- there was a 2019 judgment

against both J&J and JJCI and Cypress. It went up on appeal. It was affirmed on appeal. It's final. It's over with. The Anderson case, that was a plaintiff's verdict, went on appeal. Oral arguments occurred. After oral arguments, they immediately settled the case. Now, I can't tell you the amount, but they settled the case.

So, the Prudencio case, it's on appeal and it's bonded. I've said, let's settle this case. It's 10 percent interest. You're paying 10 percent interest. Let's settle it. So Ms. Prudencio, she's 35 years old, let her get some compensation now. The response to that is, "We get 14 percent interest in our investments. We get more interest in our investments than we have to pay Ms. Prudencio on it, so we're not going to negotiate." That's the response.

So I'm willing to -- if counsel wants to modify the order to allow to go to the court of appeals, that's fine with -- that's fine with me.

The final point is preservation of testimony and gathering of evidence. When we were before Judge Whitley in North Carolina, the debtor agreed that we could take depositions of dying plaintiffs, but that's it. Having done this for a number of years, there's been a lot of cases where key witnesses die in between the time you file the lawsuit and the time that you go to trial. That happens in lots of cases, and the stay order wherein doesn't -- you know, doesn't allow

us to gather that -- those other witnesses' testimony.

And with regards to the extremist depositions, J&J or LTL, or none of the -- they don't attend any of the depositions. They don't -- we have sent out notice to them. They just ignore us. They don't attend. And I suspect there might be an argument later that it has less evidentiary value because they weren't there.

So for all those reasons, and for the reasons set forth in our written materials, we'd request Your Honor to modify -- modify the PPI order. We're not asking for a discovery in 40,000 cases. We've got a very limited request. And I appreciate Your Honor's time.

THE COURT: Thank you.

MR. RUCKDESCHEL: Your Honor, very briefly, Jonathan Ruckdeschel again. Just to follow up on Mr. Satterley's comments regarding whether it's the same liability as the debtor has argued today, that this is all -- because it's the same bottle of stuff, it's all the same liability, that's simply, with respect to the retailers, not true with respect to state law either.

As with Johnson & Johnson, in any state where there's apportionment of fault, the fault that's getting apportioned to a retailer is solely that retailer's fault. The jury makes that determination. This portion is your responsibility. That's all they're responsible for.

And in joint in several states like Maryland, the law is set up so that the retailer bears the risk of the insolvency of somebody up the chain, including the manufacturer, like LTL has now assumed. It's independent liability of these companies. They have their own fault under state law. And a great example of that is the sealed container defense, which has been enacted by statute in many, many jurisdictions. And nearly all of the sealed container statutes that I've ever seen that say a retailer who gets a product that's defective in a sealed container that they can't ordinarily or easily determine the defect of who sells it to somebody and they're harmed by it doesn't have liability unless the manufacturer is insolvent in bankruptcy, can't be recovered against it.

So there's a carve out in all of these where the states recognize that the retailers have their own liability. Everybody in the chain of distribution is responsible under state law. It's their own fault.

Thank you.

THE COURT: Mr. Placitella.

MR. PLACITELLA: Tell Mrs. Caplan I only saw one soda this afternoon.

(Laughter)

MR. PLACITELLA: Kimberly Naranjo's case is pending three blocks from Johnson & Johnson's headquarters. They can't say that it's cherry picking jurisdictions. I've seen Mr. Kim

in the courthouse there. He can walk there. He doesn't need car service. Ms. Brown sat next to me for months in trial. She knows her way.

So if they want to appeal that judgment when it's over, we're okay with that. But there will be no fair resolution in this case so long as Johnson & Johnson holds all the cards.

Thank you, Your Honor.

THE COURT: Thank you, counsel.

Anyone on Zoom wish to be heard?

(No audible response.)

THE COURT: All right. Then let's move -- well, let me start. With respect to the estimation matters and the continuation of the preliminary injunction or the continued extension of the automatic stay, I am going to reserve until Thursday morning, July 28th, that's this Thursday, at 11:00 o'clock. I will announce my rulings. I will be announcing my rulings on all the matters heard today on Thursday morning. I want the opportunity to review and consider what's been presented.

It will be 11:00 a.m. Thursday morning. Access will be provided through Zoom link posted. So you obviously need not come. We don't want you.

(Laughter)

THE COURT: Just appear through Zoom. There will be

no argument. I'll just be -- I will just be placing my rulings on the record.

All right. Let's get last, but certainly not least, folks, the insurers' arguments. Are we starting with Travelers or the coverage? Any preference?

MR. FRANKEL: I think I'm going to be pretty brief, Your Honor.

THE COURT: Sure.

MR. FRANKEL: I think the New Jersey plaintiff insurers will follow with some additional comments.

THE COURT: All right. Appearances, please.

MR. FRANKEL: Andy Frankel, Simpson Thacher, for Travelers. And as I said, I am going to be brief, Your Honor.

Not only has it been a very long day and Your Honor has shown extraordinary patience. There's bigger fish to fry than the insurance issues. But we've already argued and briefed these issues before, back in March. We filed the motions five months ago. So I'm just going to hit a couple of the high points and reassess where we are.

At the March hearing, I think we showed for Travelers and the other insurers that, in our view, the balance of harm -- harms weighs in favor of lifting this stay. There's no prejudice to the debtor if the action proceeds. It's only a suit seeking declaratory relief, it's not seeking money damages, certainly not against the debtor.

J&J has been represented by McCarter & English for two years while they were litigating thousands of claims in the tort system. McCarter & English stands by the ready to continue the litigation. They have been doing work in this case and they continue to, you know, research coverage issues, deal with discovery. In fact, they've been engaged, it appears, in some discovery with the TCC on insurance issues while the insurers have been stayed.

There has been significant document discovery in the underlying case that doesn't have to be recreated. There hasn't been significant or any third-party discovery that's been completed. And there are a number of right issues that can be determined in very short order that might not involve much, if any, discovery. That's not true for all the issues, but for some of those issues.

I think the real key is, Your Honor, that all parties would benefit from obtaining clarity on some of these fairly complex, in some cases, coverage issues.

The insurers do believe that we're harmed by the continuation of this stay. There's obvious uncertainty with having the exposure hanging over insurers' heads to the tune of what they say is about $2 billion.

We have parties on all sides of the room talking about how they have rights to that insurance coverage or potential rights to coverage. All parties are talking about

ways to resolve the claim, to potentially hand a portion of the bill over to the insurers, while we're not parties to those negotiations and discussions.

So it makes -- and there are other -- there are other issues that have been addressed in the papers and previously in terms of like loss of evidence, memories fade. We haven't had the ability to pursue all of our third-party discovery and the like. There's the issue of potential accumulation of prejudgment interest.

So when courts have looked at similar issues in other mass tort bankruptcies, as I think we've indicated before, the norm in these cases is to allow the coverage action to proceed, particularly whereas here there's a preexisting state court action. It's the norm, and it's usually not even contested.

Ultimately, back in March, Your Honor decided that it made more sense to focus the parties on mediation. There would not be any undue prejudice with a 90-day breathing spell, which turned out to be slightly longer. But by this point in time, we would have a sense of whether or not there would be a consensual resolution.

I don't think I need to explain to the Court where we are on that front. But what the debtor is basically saying at this point is that, okay, there's no -- there was no mediated resolution, but let's just hold all these insurance issues in

abeyance indefinitely. And we don't think that makes any sense.

I think there was an interesting back and forth that might illustrate, you know, some of the problems that Your Honor had about this question of the funding agreement. And I'm not going to address the funding agreement. I haven't studied that in quite some time. But in terms of the responses to Your Honor's questions about that, well, how do we determine if there's insurance coverage is -- is exhausted, I frankly would quibble with both Mr. Molton's and Mr. Gordon's responses. Both of them suggested that well, we can deal with this during confirmation, and we just need to know the size of the problem. There's only $2 billion worth of coverage, so if there's, you know, three or five or ten billion or more in liabilities, then insurance is going to be exhausted.

And for better or worse, Your Honor, it's not that simple. There are all kinds of issues that only the state court can determine. I don't think Your Honor wants to have a mini trial on insurance coverage issues as part of the confirmation hearing, but there are issues like over how long a period are damages allocated, what policies are included in that allocation.

There were multiple coverage defenses that might take out of the equation categories of damages and that have coverage implications. All of these issues, I think only the

state court can decide.

And so if it turns out that determining these issues is somehow going to be a critical issue in this case, that's all the more reason to lift the stay to allow those issues to get resolved.

Frankly, I think in all likelihood it's going to continue to be the case that insurance is a non-issue in this case. It's not going to bring the parties together for purposes of mediation. It's, you know, $2 billion for all the insurers. It's certainly a lot of money. And my clients in particular would like to get clarity and resolution of those issues.

But given the uncertainty as to what coverage potentially exists, the issues that want to get -- we want to get resolved in the declaratory judgment action and in comparison to the magnitude of the -- both the funding agreement and the potential liabilities, it's a fly on the tail of a dog.

And, you know, the insurers have not been active participants in the mediation, not for lack of trying, but I think there's just a recognition that it's not going to move the needle, unfortunately.

Now that's not to suggest, and I certainly don't want to suggest that what we're asking Your Honor to do is to go off back to New Jersey state court and litigate these issues to the

ends of the earth and not participate in mediation. We would love to be able to continue in mediation.

We've had some discussion with the mediators about, you know, if there's a way to resolve coverage issues, and we would certainly be in favor of continuing that. But it just hasn't been a priority given the size and magnitude of other issues.

And so I think -- and my view has always been that having -- when you have so many issues that are complex and separate parties, at least in insurance coverage cases, but this is true for all cases, sometimes having a forum available to narrow those issues and dispute can bring the parties together, incentivize those to settle.

So we're certainly proponents of mediation. We'd like to continue to be part of mediation. And I think it would be more likely to succeed if we have an ability to get some rulings out of the state court on some of those complex coverage issues.

The debtor hasn't really said much at all in its response or its position in July a couple weeks ago as to why the stay ought to be maintained. You know, I think there was -- there was some suggestion that there were possibly factual issues that overlap and the parties ought to examine, you know, damage -- keep their focus on the big picture in resolving this case.

Well, I think the first response to that, Your Honor, is that coverage -- declaratory judgment coverage actions routinely go forward even while the underlying litigation is ongoing. That happens all the time. Parties want to get determinations on what their rights and obligations are before the underlying cases are resolved to get that clarity. In fact, J&J litigated, as I said, with the insurers for some two years, while the underlying cases resolved -- were ongoing and never raised any issue that those cases just have -- or the coverage case has to just stop for that reason.

And likewise, bankruptcy cases frequently and routinely proceed while coverage cases go forward. But it's just not the case. I mean, the premise of the argument that there are going to be these determinations that are going to either be prejudicial or issue rulings on matters that are before Your Honor, it's just not so, Your Honor.

The bank -- the coverage core is not going to make any determinations on valuing or estimating claims. I think what the debtor was getting at was kind of a thinly veiled effort to kind of resurrect this argument about record taint and this -- you know, this complaint that because insurers have raised, expected and intended that that could somehow come into play and prejudice their position in this court on estimation.

And it -- I think we covered that before. I don't want to belabor the point. But the point is that in the -- in

a coverage case, the parties aren't re-litigating, you know, the Ingham lawsuit, for example. They're not looking at -- to re-litigate aggregate liability or the basis for liability for cases that have already been tried and resulted in judgment.

It's an analysis of what -- what was determined in those cases that have already -- the 50 cases that have already been tried, and those that resulted in judgments and indemnity and comparing that to the terms of the insurance policies. That's all there is.

It's something, frankly, that the state court can probably deal with on summary judgment without any discovery, at least as respects some of the existing claims.

So if there's any record taint or collateral estoppel effect, it's not the result of the kind of backward looking coverage case. It's a result of the underlying tort claims, many of which have already been tried.

So other than that, I don't believe the debtor has raised any new arguments. I think that we're basically in the same position where we were three months ago, more than three months ago and five months.

I think that if we proceed with the coverage case, the debtor is -- and McCarter & English is certainly more capable than most debtors that have litigated insurance coverage cases during the pendency of a bankruptcy course. And

I really do believe that rulings can both bring parties together for purposes of mediation and settlement and eliminate some of the needless uncertainty.

Because some of these issues, if there's no settlement, certainly not with the insurers, of the coverage issues -- and again, we're committed to trying to reach a resolution -- these insurance issues are not just going to go away. Even if a plan is confirmed, we don't want to be in a position where nine months from now, a year from now, two or three years from now, there's a plan and at that point, parties say, well, now it's time to pay up and we haven't gotten any closer to a resolution of these issues.

So I think it would be informative for on all sides of the equation here -- I think there could be rulings that would be informative to the Court, and -- and for those reasons, and the reasons that we argued previously and in our papers, we request that this stay be lifted to allow the New Jersey action to proceed.

THE COURT: All right. Thank you, Mr. Frankel.

MR. ROSS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ROSS: Terence Ross with the Katten firm for the so-called moving insurers who are the plaintiffs in the New Jersey coverage action.

Your Honor will remember we were here March 30th, and

this was carried over. And just so the record is clear, we incorporate our arguments from that March 30th hearing.

Now, a lot has happened -- nobody knows that better than you, Your Honor -- since March 30th. And we've got some clarity in a couple points, two really important points with respect to these lift stay motions.

The first is that the mediation which was the central reason for carrying over our motions give that a chance. In those four months, it's come to impasse and that's, I believe, Your Honor's word, impasse, not mine.

We all recognize that. We all acknowledge that. People coming at it from different points of view, but it's a fact. It's out there. And that was the core reason for not immediately granting us the motion to lift stay at that time.

It now seems that at least under one plan, the mediation will be revisited a year or so from now, after an estimation proceeding, under another set of clients. We'll try some cases, maybe get them done by the end of the year, and then see where we stand to do mediation.

But at the time of the March 30th hearing, Your Honor talked about let's give it 90 days or so, and let's see where we are. Well, we're now talking about another year or another nine months, depending on which way Your Honor goes. And remember, March 30th wasn’t the beginning of the stay that operated against us. We've been stayed now for nine months.

In fact, their petition was filed the day before we were filed summary judgment motion in the New Jersey coverage action. So we've been waiting on that. Your Honor, that would have been decided by now. And that summary judgment motion went to the claim control provisions, a central issue of coverage. We would have all benefitted from that clarity.

The second thing that's happened since then, and I think we all can agree on, is that the insurance coverage has to be decided at some point, not by this court, not in these proceedings. So we all acknowledge it's got to be done. I've heard it referred to in the briefs. I've heard it referred to in argument today. And not once has anybody suggested that's something that can be done here. And indeed it can't. It has go back to the New Jersey court.

And so those are the two things that it seems to me we now know in the four months that have gone that it seems like everybody should agree on, that we're at impasse on the mediation, the reason for not lifting stay in the first place, and that we really do need this coverage of litigation decided, and it has to be decided in the New Jersey court.

I would argue, Your Honor, that that is all the support that's needed, or under the words of the case law, that's the cause that we are required to show to have the stay lifted.

Now, as I offered to do March 30th, and I'll offer

again here, is we've even offered the Court alternative relief that is not a complete stay lift. We've asked for a couple things. Let me just talk briefly about those, and you can ask me questions.

The first -- this is really becoming important with the passage of time -- is this third-party discovery. It's been outstanding since last fall, and it's now nine months, ten months later and we're proposing to carry this -- kick this down the can [sic] another year, or maybe nine months, depending which way the Court goes. I mean that that's just not reasonable.

THE COURT: That's discovery on what issues?

MR. ROSS: So on all issues in the case --

THE COURT: Like there's the E and I issue.

MR. ROSS: -- that are posed to third parties, posed to third parties.

THE COURT: Okay. Posed to the third parties on the E and I, on the claims control?

MR. ROSS: Yes, Your Honor.

THE COURT: On Middlesex?

MR. ROSS: Yes, Your Honor.

THE COURT: Okay.

MR. ROSS: And that has already been propounded. It’s just the due date for production had not come yet.

And so it's been sitting there and that's very

worrisome, because those are the sort of things that corporations might lose, might forget, might have employees move on. And it seems to me there's no reason not to allow that, given the posture we're now in. And that is a very real prejudice to the insurance defendants -- plaintiffs here.

The second part of it is this summary judgment of claims control, which is ready to go. We ought to allow that to go forward. And that would really, as Mr Frankel said, inform a lot of decisions that have to be made in this proceeding. We need to allow that to go forward. All we have to do is file it. They'll brief -- debtor will -- J&J will brief it, and the Court will decide it. There's nothing more that needs to be done there. So that's the second type of relief we think we ought to get.

The third is this Middlesex discovery. I mean, this is really central to this issue that the TCC has brought up, is how much insurance is out there. And we just don't know, because we haven't conducted the discovery. And the reality is regardless, Your Honor, which way you go, the estimation allow the plan, that's going to be discovered. It just has to be. It's a critical part of what's going to happen in this court. And therefore, we might as well get started on it.

We're not inflicting any additional burden, because the TCC has very good lawyers. They'll get to the bottom of that. And so we -- we ought to be allowed to do it as well.

And then the fourth is this E and I issue. And I thought Mr. Frankel described very eloquently how that's not really any form of prejudice or harm to the debtor, because again, it's about facts, F-A-C-T-S. The facts are what they are. We just want to get them out on the table.

And if those facts mean that the E and I provisions of the policies kick in, well, that's too bad for the debtor, but they're facts. I mean, they're not going to change as a result of discovery. There's not going to be some sort of collateral estoppel on facts. They just are whatever they are. Let's find out what they are so everyone here will have that information. It won't just be cabined up in Middlesex.

And so although, Your Honor, I'd really like to see you lift the stay and let's get going on this New Jersey action rather than waiting another year or another nine months, at a minimum, I'd ask you to take into serious consideration granting the alternative relief.

If you don't have any other questions, Your Honor, that's all I have.

THE COURT: No, I'm good. Thank you very much.

All right. For the debtor. And I guess what gnaws at me, and I would like to hear from both the Committee and the debtor, is an answer or to address don't we have to tackle these issues at some point, since everybody's speaking to the funding obligations under the plan and nobody's dismissing?

Yes, we're talking about maybe icing on the cake, but it's still substantial icing.

Well, when do we -- when do we get there?

MR. PRIETO: Sure, Your Honor. Maybe I'll start with that question.

THE COURT: Sure.

MR. PRIETO: This is Dan Prieto, Jones Day, on behalf of the debtor.

And Your Honor, just to address whether we need to pursue this litigation in order to resolve this case, I think the answer is squarely no, or at least certainly -- there's certainly many outcomes where that would not be necessary.

And if you think about it, I mean, if the answer is yes, then what we're saying is we have to go through years of coverage actions before we can resolve that case. I don't think anybody believes that we would be held hostage by the insurance coverage action.

And if you think about it, there's several alternatives. One is that we reach a resolution, as we're trying to do in this case, where we agree to fund the trust with cash or other consideration and the insurance -- the insurance rights are maintained by the company. We would need a resolution of these issues in order to exit this case, if that were the -- if that were the settlement.

Alternatively, another option is that maybe the

rights get assigned under certain conditions. You wouldn't necessarily need a resolution of the underlying insurance issues in that circumstance either.

So while I understand why, you know, the insurers, I guess, want clarity and that's -- that's their -- as far as I can tell, that's their main harm that they're articulating, they want clarity. They don't like this cloud overhanging over them.

But you have to put that in context of the damage it would due to the process. So let me just, you know, start by saying that obviously we continue to believe that the insurance coverage action should, you know, remain stayed. And like everybody else, I'll incorporate all my arguments I made previously. We filed objections. We filed a statement. So I'll try to be brief, Your Honor.

But I would say to Your Honor, if anything, given the status of the cases now, I would argue there's even more reason to maintain the stay at this juncture in this case, which I think Your Honor has referred to as a turning point in the case, than there was when we originally addressed these matters back in March.

And if you'll recall, Your Honor, at that point, we were on the cusp of starting mediation. And the parties are correct. We're not exactly where we would love to be in terms of having reached a resolution.

But the point is mediation remains ongoing, including with the insurers. And we are on the cusp of embarking on a path to, you know, implementing the next steps in this case, based on how Your Honor will ultimately rule.

And I would submit to Your Honor that restarting the coverage action at this point would be disruptive and would distract not only the debtor, but the Committee and the FCR. And the Committee, I think you'll hear from them today, they're not in favor of restarting the coverage action. I think they recognize it would be disruptive to whatever process Your Honor determines is appropriate in terms of how to proceed in this case.

And I think, Your Honor, the other point here, and I think it's significant, is you haven't heard any reason why there's a pressing need to restart the action. The insurers, they're not paying indemnity. They're not incurring defense costs, because the talc claims are stayed at this time. And they're disputing coverage.

And as I stated out at the outset, it’s not necessary in order for this case to resolve that we litigate to a conclusion the issues that are in the coverage case.

And I would also say, Your Honor, there's no changed circumstances from when Your Honor issued your ruling saying that the coverage case should be stayed. It's still the case that lifting the stay will require the litigation of issues

that are central to this case. And of course, I'm referring to what the parties have been talking about here, which is the expected and intended coverage defense that the insurers have asserted in the action. And we've discussed that at length in our objection in -- you know, to the motions.

And I would just remind Your Honor, I think Your Honor found on the record, when you -- when you ruled that this matter should be stayed, that there would be prejudice caused by litigating that defense. That was in part the basis for your ruling.

And, you know, the insurers seem to be arguing that don't worry about it, Your Honor. It's just based on facts and the debtors should just have to live with the facts, and the parties in this case, you just have to live with the facts as they articulate it.

But the point is they're trying to establish as part of that defense that asbestos was in the product and that we knew it was in the product and therefore there's no insurance coverage whatsoever.

Well, obviously, that kind of argument -- inquiry decided by a state court outside of this court could have ramifications for this entire case. And that's the fundamental point. We're trying to resolve those issues in this case through, the debtor believes, most appropriately an estimation process, but also as part of the mediation. So, you know,

forcing us to litigate those issues at this juncture to us would be harmful, Your Honor.

Travelers tries to downplay the impact of litigating this defense by arguing that it has been routinely addressed in other cases, even -- you know, I think they even said in other bankruptcy cases while there's -- you know, while the underlying tort claims remain pending.

And I don't -- I'm not here to dispute that. That's probably true. And I think I covered this last time, but I think that overlooks what makes this case particularly unique, which is we dispute there was ever asbestos even in the product. And in order for them to pursue that defense and establish that, they're going to have to show that that assertion we make is false.

And that's, I think, what makes this case unique. I don't think that was the situation in other cases. They may be arguing about the extent to which their products may have caused harm, but I don't think people were arguing there was no asbestos at all in the product.

So Your Honor, it's still the case, as it was back in March, that the insurance coverage action is in its early stages, it’s still the case that the debtor affirmative claims against insurers are stayed, and it’s still the case that the insurers are not incurring any cost at this time, given the stay of the talc litigation.

So really what that leaves you with, from my perspective, you have clear harm on the debtor side. So the question then is have the insurers demonstrated sufficient harm on their side to have Your Honor, you know, change -- change your -- your previous decision to keep the stay and lift the stay. And I would submit, Your Honor, they haven't identified any real harm at all.

And I'm going to real, real briefly just sort of hit their main points that I think they've made today, as well as in their papers, since we didn't have a chance to address them. Just a couple of points.

First, they say that somehow by leaving the stay in place, we're depriving them of their rights under the claims control provisions and their policies. And I think you heard today the insurers argue that has to go forward. It's critical. It will determine, you know, how this case proceeds from their perspective.

But the talc claims are stayed, so it's not -- really shouldn't be an issue. In addition, you know, leaving the stay in place doesn't modify whatever contractual rights they believe they have under the policies. Rather, it just defers litigation regarding any disputes about whether the debtor violated those provisions or not.

And if they ultimately believe that some settlement that's reached in this case impacts their rights or violates

those provisions, I'm sure they'll assert that as a defense. But leaving the stay in place doesn't impact that issue.

The insurers also argue that maintaining the stay increases the risk that a global settlement will be reached without resolution of the coverage action, sort of acknowledging that global resolution could in fact be reached without their issues being addressed. And again, I would acknowledge that, but that doesn't harm them. Again, if there's a global resolution that affects their rights, they'll object to it and Your Honor will determine whether they have standing and whether their rights have been impacted in a way that's inappropriate.

The insurers also argue that the stay is unfair because the TCC has requested certain information about the insurance coverage action at a time when the insurers are not permitted to pursue their coverage action.

Well, it's true. We did receive information requests from the TCC. I don't think there's anything unfair about the TCC trying to get up to speed on the insurance coverage action. And it's not like we're asking the insurers to produce new information. We're simply sharing with the TCC what information has already been produced in underlying coverage action so they could determine where things stand.

And then finally, Your Honor, the insurers argue that further delay may harm them because we may seek prejudgment

interest in the event that debtor prevails in the coverage action. Again, I think I just -- I addressed this last time, but counsel did raise it again, that during the pendency of the litigation and the stay, the insurers aren't paying anything that they owe under the policies. And so the benefits to them of not paying anything has been extended during this period of time.

And also, I would just say that concerns about prejudgment interest are premature as the coverage remains in its early stages -- coverage action remains in its early stages and there's not a trial expected, I think at this point, until before 2024.

So finally, let me just address the request for a partial lift stay. As I have read the papers and I heard this morning, what the insurers seem to be contending is that -- as an alternative is that, well, let us go pursue several of our purported defenses that we really want to assert, namely, you know, issues with respect to allocation of Middlesex policies, which would give them a defense to coverage under their policies. They want to pursue defenses with respect to the claims control provisions. And, notably, they want to pursue the expected and intended defense.

And of course they also want to take third-party discovery, which would require our participation in order to monitor, you know, that discovery.

You know, from my perspective, Your Honor, this sort of cherry picking the issues that they want to pursue at this point would be unfair and highly inefficient. And most importantly, the partial lift stay would burden and distract us for the same reasons I said before, because we'd be having to deal with the issues with respect to the expected and intended defense.

So Your Honor, for all those reasons, and the reasons we have previously set forth in our objection and in our papers, their statement in support of the continuing stay, we would respectfully request that Your Honor decline to lift the stay at this time and permit the parties the opportunity to implement the next steps in this case and see if we can ultimately get to a consensual resolution of this case.

THE COURT: All right. Thank you.

MR. PLACITELLA: Thank you, Your Honor.

MR. MOLTON: Your Honor, David Molton. I just want to apologize to my co-counsel, Bob Horkovich, who was looking forward -- he's our special insurance counsel. He was looking forward to coming up here and talking, but because Your Honor's question involves some of what we talked about earlier, he'll have to wait until another day.

So, in any event, Judge, we agree with what's been said by I think everybody, the insurers, as well as the defendant, the debtor, that the insurance issue is a very,

very, very, very, very small tail on a very, very, very, very, very large dog.

I do want to note that, you know, there's been -- J&J have made payments already, including the Ingham payment that may have already arguably exhausted, you know, various policies.

But one of the things that I know from my experience is that these sort of issues, especially when this isn't really an insurance play case, it's not contra Boy Scouts or see Boy Scouts for the -- an insurance (indiscernible). These things can be resolved and dealt with in mediation in a cogent, effective manner.

I think the insurers have indicated that they believe and willing to engage in mediation on these issues. One of the things is the Committee stands ready with the debtor to do that and engage. And to the extent that there's information sharing -- I'm not going to say full boat discovery as what -- what was requested -- but information sharing from the debtor, from the insurers would be helpful to facilitate that mediation.

I think that that's something that the parties should sit down and meet and confer and discuss and see whether that can be done so that we can address this, again, very, very small tail on this very, very large dog and deal with it and hopefully resolve it in a way that it doesn't get in the way of the big game, which I don't think it will.

So we had filed a joinder with the Court, with the debtor's objection, and that joinder is still on the record. But from my perspective, listening to what I've heard today and in the context of what Your Honor is going to be considering and giving us some direction on on Thursday, it would seem to me that there can be -- again, we can all walk and chew gum at the same time in this courtroom. There should be some effort to concentrate on getting the parties what they need at least to have further mediations and try to resolve this as efficiently as possible.

Thank you.

THE COURT: Thank you, Mr. Molton.

Mr. Frankel?

MR. FRANKEL: Just very briefly, Your Honor, a couple of quick points in response.

Your Honor's question about -- or the response to Your Honor's question about don't we have to tackle these issues eventually, I think I could sum up the debtor's position that, you know, as you might not have to, Your Honor, we might have to, and so let's not worry about that.

So, for example, if the -- if the debtor agrees to fund a trust with cash and to say, look, we're not even going to ask for any insurance proceeds in connection with that cash payment, I think that might kind of narrow our role in this case in terms of objecting and, you know, making sure our

rights are preserved.

But it doesn't eliminate the coverage issues, because we still have a claim for what the debtor claims is like $5 billion worth of pass costs under those $2 billion worth of policies.

So, yes, that would certainly -- you know, we would not object to that approach, and it wouldn't need to involve Your Honor. But where would it leave the rest of the parties? Just hanging out without a forum until the conclusion, the final conclusion of this bankruptcy case.

It's the same with the other alternative that, well, we could just assign our policies to the trust or assign our rights to the trust. That might involve issues before Your Honor, because there would be no base to determine what the value of that contribution is. And if they want to rely on that contribution to support a 524(g) injunction, that could be an issue.

But even if it's not, even if as Mr. Molton says, and I agree, this is a very, very, very -- there were three or four of them, right? -- small fly on a tail of the dog or whatever it was, where would it leave the rest of the parties? It would leave them kind of held hostage, the inverse of what Mr. Prieto was suggesting. It would leave us all hostage to these proceedings.

On expected and intended, the insurers have no

interest in taking on the mantle of the plaintiffs' bar and arguing that, you know, J&J's, you know, baby products had asbestos for all these years. I think the best way to think about this is to just really think of it in a concrete way. For example, you have the Ingham judgment, which everybody knows is a multi-billion dollar judgment. And the jury made findings. And the Court of Appeals had to review whether punitive damages, for example, were warranted. And it did that by saying, well, the plaintiffs had to show that J&J expected these injuries.

So there's no new -- there's nothing new there. It's basically, at least with respect to the Ingham claim, the parties would present that to the Court, compare the terms of the policies. It's not -- I think what Mr. Prieto was kind of trying to do is suggesting that defending against the coverage case is going to be no different than the underlying tort cases. And that's just not true.

I think, you know, one other point to make in response to the TCC's position, and we've heard some of this from the debtor, none of what we're suggesting -- again, and at the risk of repetition, I know it's late in the day -- is to suggest that proceeding in the -- with the coverage case is not inconsistent with mediation.

We obviously have an interest in resolving our issues. This court has provided a mechanism to try to do that,

and we would absolutely continue with the mechanism. So it's not an either/or situation where, you know, we can't resolve any of these uncertain, unknowable issues with insurance because we should pursue mediation. They're not mutually exclusive. We would like to be able to do both.

I think the debtor downplays the prejudice to the insurers. It's absolutely the case that to this point in time, the insurers have not been asked to pay additional defense or indemnity. That obviously can change depending on what a resolution looks like and when that takes place.

And at that point, we'd have to resolve all these issues. I think the continued uncertainty is harm and it doesn't speak to the loss of evidence, particularly the third-party discovery, and the accumulation of prejudgment interest.

I spent years litigating cases where prejudgment interest turned out to be the biggest component, the biggest single component of damages when there's a significant delay. And that's what they're asking for here is a significant delay.

It would be one thing if the delay was necessary because it would -- it would so complicate the case or it would so tie up the debtor's resources that they couldn't focus on this case at the same time, but that's just not -- that's just not credible, Your Honor, with -- with a company the size of J&J, the fact that this case has been defended against and prosecuted for that matter for many years and with all the

capable lawyers.

THE COURT: But just on that issue, you're suggesting that a court down the road is going to award prejudgment interest for the period of time of the delay where arguably the debtor was responsible for the delay by asserting the automatic stay and arguably against continuation.

It seems to be improbable that a pragmatic, sensible judge is going to smack you down for the prejudgment interest when you are prevented from continuing going forward and you've repeatedly asked to go forward.

MR. FRANKEL: I could promise you with 100 percent certainty, if that argument is made, I would embrace and advocate --

THE COURT: I'm trying to give you the transcript now.

(Laughter)

MR. FRANKEL: I certainly -- and look, maybe we'll reach a stipulation. If the debtor wants to say that, you know, J&J is not going to seek prejudgment interest, that would remove that potential harm.

I have a feeling, however, even based on what we heard this afternoon, that, well, this is -- you know, you've had the benefit of the time value of money, and so we have a right to prejudgment. It doesn't matter what the reason is.

I don't agree with that. I'm saying it's a potential

harm that could -- you know, that could result from the additional delay.

THE COURT: Fair enough.

MR. FRANKEL: Thanks.

THE COURT: Thank you. Thank you, counsel.

MR. ROSS: Your Honor, just a couple of final points.

THE COURT: Sure.

MR. ROSS: First, this is not going to involve years of litigation, which I believe was the quote. We can put summary judgment motion on file in two weeks. It will be decided before any of these 12 trials get started and nine months before they get to the end of their estimation process.

That claims control decision will do more to move mediation than anything else this court could possibly do. The fact of the matter is we're -- just like Travelers, we agree, we're committed to mediation, but it's been very unsuccessful. And the reason is -- that is the claims control provision.

We should be in the mediations between the TCC and the debtor. Our argument, which will be part of the summary judgment motion, is we've been denied that.

Now, prejudice. It has been said that we're just looking for clarity. That's not prejudice. We're not just looking for clarity. There is a very real chance, a spoilation of evidence that goes on, if we have to wait not just the nine

months we've waited, but another year and nine months. That's very real prejudice recognized by the law.

Second, we are continuing every day to be deprived of our rights to control the settlement process by this continuing refusal to allow us into their mediation. That is a right we want to enforce and can only be enforced in the New Jersey courts. And that's a very real prejudice.

Now, finally, I won't get the verys right, but if this is such a very, very, very, very small matter, how is it so distracting and disruptive of the debtor when the lawyers involved aren't even here? It's a very good, large New Jersey firm for a very, very, very, very small matter. How is -- out of their own mouths. How is that disruptive or distracting if it's such a very, very, very, very small matter?

It just -- the reality is the debtor doesn't want to face up to what the problems they have under the claims coverage provisions. They don't want us to get to the end of the day and find out that they don't have any coverage so that they can use the mediation to get something out of us instead of the zero that they're going to get in the New Jersey court.

And that's why the mediation won't work until you let us bring the summary judgment motion on claims control.

Thank you, Your Honor.

THE COURT: Fair enough.

All right. Thank you. Thank you, counsel. I think

we've reached the end.

One or two housekeeping matters. So again, I'll read my rulings or announce my rulings on Thursday morning at 11:00. We have omnibus dates set 8/23 and 9/14. That's September. I don't know how far into the fall we will go. October's date, I would like to get a date for October in case there's motion practice being filed. October gets busy. We have the NCBJ annual conference, other conferences.

I have an October 4th date or an October 25th date. One is three weeks after a prior date. One would be six weeks after -- or five weeks or so. I could let you all talk about it. So these are dates that I would think to put on our calendar, October 4th or October 25th, November 22nd [sic], which is after Thanksgiving, and December 13th.

MR. MOLTON: Judge, the -- if I might?

THE COURT: Yeah.

MR. MOLTON: David Molton again. The only problem with the 4th is that's what we call era of Yom Kippur Kol Nidre that night. So, in any event --

THE COURT: I knew I was going to get myself in trouble.

MR. MOLTON: You know, we're going to have people coming from out of town and that may be a problem.

THE COURT: October 25th?

MR. MOLTON: That's great from our perspective,

Judge.

THE COURT: We'll go October 25th. I'll go five weeks without you all. November 22nd [sic] after Thanksgiving. Why don't we just plug that in. We'll see what the circuit rules and when the circuit rules and all that fun stuff. We don't even need to pick a December date yet, but keep December 13th in the back of your minds.

All right. Safe travels, folks. I'll speak to you by Zoom on Thursday.

UNIDENTIFIED SPEAKER: Judge, November 22 is (indiscernible).

THE COURT: November 23, not November 22. November 23. Good to see you all awake.

UNIDENTIFIED SPEAKER: That was a test.

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C E R T I F I C A T I O N

WE, DIPTI PATEL, KAREN K. WATSON, RUTH ANN HAGER and LORI KNOLLMEYER, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Dipti Patel

DIPTI PATEL

/s/ Karen K. Watson

KAREN K. WATSON

/s/ Ruth Ann Hager

RUTH ANN HAGER

/s/ Lori Knollmeyer

LORI KNOLLMEYER

J&J COURT TRANSCRIBERS, INC. DATE: July 27, 2022